

No. 10901

United States
Circuit Court of Appeals
For the Ninth Circuit.

CHESTER BOWLES, Administrator, Office of
Price Administration,

Appellant,

vs.

SANDEN AND FERGUSON COMPANY, a
Montana Corporation,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Montana

FILED

DEC 2 5 1944

PAUL P. O'BRIEN.
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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[1*]

In the District Court of the United States
In and For the District of Montana

No. 173

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff,

vs.

SANDEN AND FERGUSON COMPANY, a
Montana Corporation,

Defendant.

Be it remembered that on July 13, 1943, the
complaint of the plaintiff was filed herein in the
words and figures following, to-wit: [2]

In the District Court of the United States
for the District of Montana

PRENTISS M. BROWN, Administrator, Office
of Price Administration,

Plaintiff,

vs.

SANDEN AND FERGUSON COMPANY, a
Montana Corporation,

Defendant.

COMPLAINT

I.

In the judgment of plaintiff, Prentiss M. Brown,
Administrator, Office of Price Administration, de-

fendant has engaged in actions and practices which constitute a violation of Section 4(a) of the Emergency Price Control Act of 1942 (Pub. Law 421, 77th Cong. 2nd Sess., 56 Stat. 23; 50 U.S.C.A. §§ 901-946) as amended (Pub. L. 729, 77th Cong., 2nd Sess. c. 578; 56 Stat.), hereinafter called the "Act," in that it has violated the General Maximum Price Regulation issued pursuant to Sections 2(a) and 202(b) of the "Act."

II.

Plaintiff brings this proceeding for an order suspending the license of the defendant pursuant to the provisions of Section 205(f)(2) of the "Act", and, in the alternative, pursuant to the provisions of Section 205(a) of the "Act" to enforce compliance with said Section 4(a) of the "Act" and to permanently enjoin and restrain defendant, its agents, servants, employees, and all persons in active concert or participation with it, from selling, delivering, or offering for sale or delivery, any commodity in violation of the General Maximum Price Regulation, as heretofore or hereafter amended or revised, and doing, attempting, or agreeing to anything in violation thereof, or in violation of any regulation adopted pursuant to said Sections 2(a) and 202(b) of the "Act."

III.

Jurisdiction of this proceeding is conferred upon this Court by [3] Sections 205(c) and 205(f)(2) of the "Act."

IV.

Defendant's gross sales, at all times material hereto, have exceeded the sum of \$100,000 per year.

V.

At all times pertinent hereto there has been in effect, pursuant to Sections 2(a) and 202(b) of the "Act", the General Maximum Price Regulation (7 F.R. 3153). Said General Maximum Price Regulation established maximum prices for commodities regulated thereby, and provided that no person should sell or deliver any commodity at a price higher than the maximum price established by the Regulation.

VI.

By the provisions of Section 16 of said Regulation, every person selling at wholesale or retail, any commodity for which a maximum price is established by said Regulation, or by any other price regulation of the Office of Price Administration making applicable the provisions of said Section 16, was granted a license as a condition of selling such commodity.

VII.

Defendant at all times material hereto has operated a store at 111 North Main Street, Helena, Montana and has sold, and is now selling at retail from said store, yard goods, wearing apparel, sheets, pillow cases, towels, bias tape, overalls, diapers, mattresses, and other commodities, for which maximum prices are established by the General Maximum Price Regulation and other Price Regulations

of the Office of Price Administration. By the provisions of Section 16 of said General Maximum Price Regulation, defendant was granted a license as a condition of selling at retail such commodities.

VIII.

On or about January 14, 1943, a warning notice was sent by registered mail to the defendant pursuant to the provisions of Section 205(f)(2) of the "Act", and was received by defendant on or about January 16, 1943. A copy of said warning notice is attached hereto, made a part hereof, and marked [4] "Exhibit A." Said warning notice warned the defendant that if, after receipt thereof, the defendant violated any of the provisions of said license or the provisions of any regulation, schedule, order, or requirement with respect to which said license is applicable, proceedings would be instituted for an order suspending said license, all as more fully appears from said Exhibit.

IX.

The General Maximum Price Regulation provides among other things, as follows:

Section 1499.1 Prohibition Against Dealing in Commodities or Services Above Maximum Prices:

On and after the effective date of this General Maximum Price Regulation, regardless of any contract or other obligation:

(a) No person shall sell or deliver any commodity, and no person shall sell or supply any service, at a price higher than the maximum price per-

mitted by this General Maximum Price Regulation: * * * * *

Section 1499.2 Maximum Prices for Commodities and Services: General Provisions:

Except as otherwise provided in this Regulation, the seller's maximum price for any commodity or service shall be:

(a) The highest price charged by the seller during March, 1942:

- (1) For the same commodity or service; or
- (2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it; or

(b) If the seller's maximum price cannot be determined under paragraph (a), the highest price charged during March, 1942 by the most closely competitive seller of the same class:

- (1) For the same commodity or service; or
- (2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it.

Highest Price Charged During March, 1942:

For the purposes of this General Maximum Price Regulation, the highest [5] price charged by a seller during March, 1942 shall be:

(a) The highest price which the seller charged for a commodity delivered or service supplied by him during March, 1942 to a purchaser of the same class; or

(b) If the seller made no such delivery or supplied no such service during March, 1942, his high-

est offering price for delivery or supply during that month to a purchaser of the same class; or

(c) If the seller made no such delivery or supplied no such service and had no such offering price to a purchaser of the same class, the highest price charged by the seller during March, 1942 to a purchaser of a different class, adjusted to reflect the seller's customary differential between the two classes of purchasers: * * * * *

X.

The General Maximum Price Regulation provides among other things, as follows:

Section 1499.11 Base-Period Records:

Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation, shall:

(b) Prepare, on or before July 1, 1942, on the basis of all available information and records, and thereafter keep for examination by any person during ordinary business hours, a statement showing:

- (1) The highest prices which he charged for such of those commodities or services as he delivered or supplied during March, 1942 and his offering prices for delivery or supply of such commodities or services during such month, together with an appropriate description or identification of each such commodity or service; and
- (2) All his customary allowances, discounts, and other price differentials. * * * * *

XI.

The General Maximum Price Regulation provides among other things, [6] as follows:

Section 1499.12 Current Records:

Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation shall keep, and make available for examination by the Office of Price Administration, records of the same kind as he has customarily kept, relating to the prices which he charged for such of those commodities or services as he sold after the effective date of this General Maximum Price Regulation; and, in addition, records showing, as precisely as possible, the basis upon which he determined maximum prices for those commodities or services.

XII.

The General Maximum Price Regulation provides among other things, as follows:

Section 1499.13 Maximum Prices of Cost-of-living Commodities: Statement, Marking or Posting.

For the purposes of this section, a cost-of-living commodity is any commodity designated as such by the Price Administrator. A list of the classes of commodities so designated appears in Section 1499.25, Appendix B, of this General Maximum Price Regulation.

(a) On and after May 18, 1942, every person offering to sell a cost-of-living commodity at retail

shall mark the maximum price of such commodity in a manner plainly visible to, and understandable by, the purchasing public. The maximum price may be marked on the commodity itself or on the shelf, bin, rack, or other holder or container upon or in which the commodity is kept, or it may be posted at the place in the business establishment where the commodity is offered for sale: Provided, That whichever of the above methods of posting is adopted, the maximum price of each commodity offered for sale shall be plainly visible to the purchaser at the place in the business establishment where the commodity is offered for sale, and shall not be obscured by the posted price of other commodities, whether by use of price books or catalogs or layers of price lists or other- [7] wise or in any other manner. The maximum price shall be stated as follows: "Ceiling Price \$....;" or "Our Ceiling \$....." Any person choosing to post by price-lines the maximum prices of commodities in the classifications marked by asterisks in Appendix B, shall post the maximum price by price-line at the place in the business establishment where the commodities in such price-line are offered for sale, and, in addition, shall mark the selling price of each such commodity on the commodity itself. * * *

(b) On or before July 1, 1942, every person offering to sell cost-of-living commodities at retail shall file with the appropriate War Price and Rationing Board of the Office of Price Administration a statement showing his maximum price for each such commodity, together with an appropriate de-

scription or identification of it. Such statement shall be kept up to date by such person by filing on the tenth day of every succeeding month a statement of his maximum price for any cost-of-living commodity newly offered for sale during the previous month, together with an appropriate description or identification of the commodity. * * * * *

XIII.

After receipt of said warning notice, the defendant violated the provisions of the General Maximum Price Regulation and the license granted by it under Section 16 thereof in the following particulars:

a. That the defendant subsequent to the receipt by it of such warning notice and on or about February 1, 1943, prepared a purported base period statement as required by Section 1499.11(b) of said regulation, but that such statement was defective in that the defendant failed, neglected and refused to list therein all of the commodities it sold, or offered for sale during March, 1942, with the maximum prices thereof; that it was further defective in that the description of certain articles listed therein is so indefinite, uncertain and confused, that it is impossible to determine what articles are priced or the price thereof; that the said Base Period Statement does not contain an appropriate description or identification of many of the commodities listed thereon;

b. That on or about February 1, 1943, the defendant filed with War Price and Rationing Board

5-1, Helena, Montana a purported Cost-of-Living Commodity Statement as required by Section 1499.13(b) of said regulation, but that the description of certain commodities listed therein is so uncertain, vague, indefinite, and confusing that it is impossible to determine what articles are priced or the prices therefor; that said Cost-of-Living Commodity Statement does not contain appropriate description or identification of the articles listed thereon; that the said Cost-of-Living Commodity Statement is further incomplete and defective in that the defendant is offering for sale many Cost-of-Living Commodities which are not listed in the said Cost-of-Living Commodity Statement; that no supplements to said Cost-of-Living Commodity Statement have been filed.

c. That between the dates of March 23 to March 31, 1943, the defendant offered for sale the following Cost-of-Living Commodities, to-wit:

Ticking, Indian Head, Jersey, Sharkskin, all which are yard goods, and cotton bedspreads, overalls, sheets, women's and girls' dresses, women's skirts, children's gloves and children's hosiery,

and at the same time failed to post or display the maximum prices or the ceiling prices therefor;

d.(1) That during the month of March, 1942 the highest price at which the defendant sold or offered for sale, gingham, a yard goods, was the sum of thirty-five cents (35c) per yard; that during February and March, 1943, the defendant sold and

offered for sale gingham, a yard goods, at thirty-nine cents (39c) per yard, such price being in excess of the highest price charged in March, 1942, thereby violating Sections 1499.1 and 1499.2 of the General [9] Maximum Price Regulation and the provisions of the "Act."

d.(2) That the highest price at which the defendant sold, or offered for sale, gingham, a yard goods, during the month of March, 1942, was the sum of thirty-five cents (35c) per yard; that notwithstanding that such was the highest price charged for gingham during March, 1942, and the defendant's maximum price therefor, the defendant stated in its Base Period and Cost-of-Living Commodity Statements that the maximum price for gingham was thirty-nine cents (39c) per yard, and that the defendant thereby falsely represented in its Base Period and Cost-of-Living Commodity Statements the maximum price for gingham, contrary to Sections 1499.11 and 1499.13 of the General Maximum Price Regulation, and contrary to the provisions of Section 202(b) of the "Act."

d.(3) In the alternative to d(1) and d(2) *supra*, the defendant sold, or offered for sale, during the month of March, 1942, kinds, qualities, or widths of gingham at prices lower than thirty-nine cents (39c) per yard and failed, neglected, and refused to include the less expensive kinds, qualities, and widths of gingham in its Base Period Statement in violation of Section 1499.11 of the said General Maximum Price Regulation and the "Act."

e.(1) That during the month of March, 1942, the highest price at which the defendant sold, or offered for sale, denim, a yard goods, was the sum of thirty-nine cents (39c) per yard; that during February and March, 1943, the defendant sold, and offered for sale, denim, a yard goods, at forty-five cents (45c) per yard, such price being in excess of the highest price charged for said denim in March, 1942; and that the defendant thereby violated Sections 1499.1 and 1499.2 of the General Maximum Price Regulation and the "Act."

e.(2) That the highest price at which the defendant sold, or offered [10] for sale, denim, a yard goods, in the month of March, 1942 was the sum of thirty-nine cents (39c) per yard; that notwithstanding that thirty-nine cents (39c) per yard was the highest price charged for denim during the month of March, 1942, and the defendant's maximum price therefor, the defendant stated on its Base Period Statement and Cost-of-Living Commodity Statement that the highest maximum price for denim was forty-five cents (45c) per yard and that the defendant thereby falsely represented in its Base Period and Cost-of-Living Commodity Statements and maximum price for denim, contrary to Sections 1499.11 and 1499.13 of the General Maximum Price Regulation and contrary to provisions of Section 202(b) of the "Act."

e.(3) In the alternative to e(1) and e(2) supra, the defendant sold, or offered for sale, during the Month of March, 1942, kinds, qualities, or widths

of denim at prices other than thirty-five cents (35c) and forty-five cents (45c) per yard, the prices shown on the Base Period and Cost-of-Living Commodity Statements, and failed, neglected, and refused to include the other kinds, qualities, and widths of denim in its Base Period Statement in violation of Section 1499.11 of the General Maximum Price Regulation and the "Act."

f.(1) That during the month of March, 1942, the highest price at which the defendant sold, or offered for sale, challis, a yard goods, was the sum of twenty-five cents (25c) per yard; that during the month of March, 1943, the defendant offered for sale, challis, a yard goods, at thirty-two cents (32c) per yard, such price being in excess of the highest price charged for said challis, yard goods, in March, 1942, and that the defendant thereby violated Sections 1499.1 and 1499.2 of the General Maximum Price Regulation and the "Act."

f.(2) That the highest price at which the defendant sold, or offered [11] for sale, challis, a yard goods, in the month of March, 1942, was the sum of twenty-five cents (25c) per yard; that notwithstanding that twenty-five cents (25c) per yard was the highest price charged for challis during the month of March, 1942, and the defendant's maximum price therefor, the defendant stated on its Base Period Statement and Cost-of-Living Commodity Statement that the maximum price for challis was thirty-two cents (32c) per yard, and that the defendant thereby falsely represented in its Base Period and Cost-of-Living Commodity Statements the maxi-

imum price for challis, contrary to Sections 1499.11 and 1499.13 of the General Maximum Price Regulation and Section 202(b) of the Emergency Price Control Act.

f.(3) In the alternative to f(1) and f(2) *supra*, the defendant sold, or offered for sale, during the month of March, 1942, kinds, qualities, and widths of challis at prices lower than thirty-two cents (32c) per yard, the only price shown in the Base Period and Cost-of-Living Commodity Statements, and failed, neglected, and refused to include the less expensive kinds, qualities, and widths of challis in its Base Period Statement in violation of Section 1499.11 of the General Maximum Price Regulation.

g.(1) That during the month of March, 1942, the highest price at which the defendant sold, or offered for sale, spun rayon, a yard goods, was the sum of seventy-nine cents (79c) per yard; that during the months of February and March, 1943, the defendant sold, and offered for sale, spun rayon at eighty-nine cents (89c) per yard, such price being in excess of the highest price charged for said spun rayon in March, 1942, and that the defendant thereby violated Sections 1499.1 and 1499.2 of the General Maximum Price Regulation and the "Act."

h.(1) That during the month of March, 1942, the highest price at which the defendant sold, or offered for sale, eylette, a [12] yard goods, was the sum of seventy-nine cents (79c) per yard; that during the month of February, 1943, the defendant sold, or offered for sale, eylette, a yard goods, for the

sum of One Dollar Nineteen Cents (\$1.19) per yard, such price being in excess of the highest price charged for said eylette during the month of March, 1942, and that the defendant thereby violated Sections 1499.1 and 1499.2 of the General Maximum Price Regulation and the "Act."

h.(2) That the highest price at which the defendant sold, or offered for sale, eylette, a yard goods, in the month of March, 1942 was the sum of seventy-nine cents (79c) per yard; that notwithstanding that seventy-nine cents (79c) per yard was the highest price charged for eylette, yard goods, during the month of March, 1942, and the defendant's maximum price therefor, the defendant stated on its Base Period Statement and Cost-of-Living Commodity Statement that the maximum price for eylette was the sum of One Dollar (\$1.00) per yard, and that the defendant thereby falsely represented in its Base Period and Cost-of-Living Commodity Statements the maximum price for eylette, yard goods, contrary to Sections 1499.11 and 1499.13 of the General Maximum Price Regulation and contrary to the provisions of Section 202(b) of the Emergency Price Control Act.

h.(3) In the alternative to h(1) and h(2) supra, the defendant sold, or offered for sale, during the month of March, 1942, kinds, qualities, or widths of eylette, yard goods, at prices other than One Dollar (\$1.00) per yard, and failed, neglected, and refused to include the other kinds, qualities, and widths of eylette, yard goods, in its Base Period Statement in

violation of Section 1499.11 of the General Maximum [13] Price Regulation.

i.(1) That during the month of March, 1942, the highest price at which the defendant sold, or offered for sale, gabardine, a yard goods, was the sum of eighty-five cents (85c) per yard; that during the month of February, 1943, the defendant sold gabardine, a yard goods, at One Dollar (\$1.00), One Dollar Nineteen Cents (\$1.19) and One Dollar Thirty-nine Cents (\$1.39) per yard, such prices being in excess of the highest price charged for such gabardine yard goods in March, 1942, and that the defendant thereby violated Sections 1499.1 and 1499.2 of the General Maximum Price Regulation and the "Act."

i.(2) That the highest price at which the defendant sold, or offered for sale, gabardine yard goods, in the month of March, 1942, was the sum of eighty-five cents (85c) per yard; that notwithstanding that eighty-five cents (85c) per yard was the highest price charged for gabardine yard goods during the month of March, 1942, and the defendant's maximum price therefor, the defendant stated in its Base Period Statement and Cost-of-Living Commodity Statement that the price for gabardine yard goods was eighty-nine cents (89c) per yard and One Dollar Nineteen Cents (\$1.19) per yard, and that the defendant thereby falsely represented in its Base Period and Cost-of-Living Commodity Statements the maximum price for gabardine yard goods, contrary to Sections 1499.11 and 1499.13 of the General Maximum Price Regulation and con-

trary to the provisions of Section 202(b) of the Emergency Price Control Act.

i.(3) In the alternative to i(1) and i(2), *supra*, the defendant sold, or offered for sale, during the month of March, 1942, kinds, qualities, or widths of gabardine yard goods at prices other than eighty-nine cents (89c) per yard and One Dollar Nineteen Cents (\$1.19) per yard, the prices shown on the Base Period and Cost-of-Living Commodity Statements, and [14] failed, neglected, and refused to include the other kinds, qualities, and widths of gabardine yard goods in its Base Period Statement in violation of Section 1499.1 of the General Maximum Price Regulation and the "Act."

j.(1) That during the month of March, 1942, the highest price at which the defendant sold, or offered for sale, Jersey, a yard goods, was One Dollar Sixty-five Cents (\$1.65) per yard; that during the month of February, 1943, the defendant sold, and offered for sale, Jersey, a yard goods, at the price of One Dollar Sixty-nine Cents (\$1.69) per yard, such price being in excess of the highest price charged for said Jersey yard goods in March, 1942, and that the defendant thereby violated Sections 1499.1 and 1499.2 of the General Maximum Price Regulation and the "Act."

k.(1) That the highest maximum price at which defendant listed overalls in its Base Period and Cost-of-Living Commodity Statements was the sum of Two Dollars Fifty Cents (\$2.50) per pair; that during the month of February, 1943, the defendant sold, and offered for sale, overalls at Three Dollars

(\$3.00) per pair, such price being in excess of the highest price permitted to be charged for overalls, and that the defendant thereby violated Sections 1499.1 and 1499.2 of the General Maximum Price Regulation and the "Act."

k.(2) In the alternative to k(1), the defendant sold, or offered for sale, kinds, qualities, or sizes of overalls other than the kinds, qualities, and sizes of overalls listed in its Cost-of-Living Commodity, and failed, neglected, and refused to include said other kinds, qualities, and sizes of overalls in its Cost-of-Living Commodity Statement in violation of Section 1499.13 of the General Maximum Price Regulation and [15] the "Act."

l.(1) During the month of March, 1942, the highest price at which the defendant sold, or offered for sale, Indian Head, a yard goods, was the sum of thirty-nine cents (39c) per yard; that during the month of February, 1943, the defendant sold, and offered for sale, Indian Head, a yard goods, for fifty cents (50c) per yard, and fifty-nine cents (59c) per yard, such prices being in excess of the highest price charged for said Indian Head, a yard goods, in March, 1942, and that the defendant thereby violated Sections 1499.1 and 1499.2' of the General Maximum Price Regulation.

l.(2) That the highest price at which the defendant sold, or offered for sale, Indian Head, a yard goods, in the month of March, 1942 was the sum of thirty-nine cents (39c) per yard; that notwithstanding that thirty-nine cents (39c) per yard was the highest price charged for Indian Head dur-

ing the month of March, 1942, and the defendant's maximum price therefor, the defendant stated in its Base Period Statement and Cost-of-Living Commodity Statement that the maximum prices for Indian Head were, Butler Brothers, 44-inch, forty-nine cents (49c); Butler Brothers, White, 54-inch, fifty-nine cents (59c), and Carson, Pirie, Scott, Colored Indian Head, fifty cents (50c) per yard, and that the defendant thereby falsely represented in its Base Period and Cost-of-Living Commodity Statements the maximum prices for Indian Head yard goods, contrary to Sections 1499.1 and 1499.13 of the General Maximum Price Regulation, and contrary to the provisions of Section 202(b) of the "Act."

l.(3) In the alternative to l(1) and l(2), *supra*, the defendant sold, or offered for sale, during the month of March, 1942, kinds, qualities, and widths of Indian Head at prices other [16] than forty-nine cents (49c), fifty-nine cents (59c), and fifty cents (50c) per yard, the prices shown on the Base Period Statement, and failed, neglected, and refused to include said other kinds, qualities, and widths of Indian Head in its Base Period Statement in violation of Section 1499.1 of the General Maximum Price Regulation and the "Act."

m.(1) That during the month of March, 1942, the highest price at which the defendant sold, or offered for sale, percale, a yard goods, was the sum of twenty-nine cents (29c) per yard; that during the month of February, 1943, the defendant sold, and offered for sale, percale yard goods at the price

of thirty-five cents (35c) and thirty-three cents (33c) per yard, such price being in excess of the highest price charged for said percale yard goods in March, 1942, and that the defendant thereby violated Sections 1499.1 and 1499.2 of the General Maximum Price Regulation and the "Act."

m.(2) That the highest price at which the defendant sold, or offered for sale, percale yard goods in the month of March, 1942, was the sum of twenty-nine cents (29c) per yard; that notwithstanding that twenty-nine cents (29c) per yard was the highest price charged for percale, a yard goods, during the month of March, 1942, and the defendant's maximum price therefor, the defendant stated in its Base Period and Cost-of-Living Commodity Statements that the maximum price for percale, a yard goods, was thirty-five cents (35c) per yard, and that the defendant thereby falsely listed in its Base Period and Cost-of-Living Commodity Statements the maximum price for percale, a yard goods, contrary to Sections 1499.11 and 1499.13 of the General Maximum Price Regulation and contrary to the provisions of Section 202(b) of the Emergency [17] Price Control Act.

m.(3) In the alternative to m(1) and m(2), supra, the defendant sold, or offered for sale during the month of March, 1942, kinds, qualities, or widths of percale at prices lower than thirty-five cents (35c) per yard, and failed, neglected, and refused to include the less expensive kinds, qualities, and widths of percale yard goods in its Base Period Statement in violation of Section 1499.1 of the Gen-

eral Maximum Price Regulation and the "Act."

n.(1) That during the month of March, 1942, the highest price at which the defendant sold, or offered for sale, diapers was the sum of Two Dollars Fifty Cents (\$2.50) per dozen; that during the month of February, 1943, the defendant sold, and offered for sale, diapers at Two Dollars Seventy-five Cents (\$2.75) per dozen, such price being in excess of the highest price charged for said diapers in the month of March, 1942, and that the defendant thereby violated Sections 1499.1 and 1499.2 of the General Maximum Price Regulation and the "Act."

n.(2) That the highest price at which the defendant sold, or offered for sale, diapers, in the month of March, 1942, was the sum of Two Dollars Fifty Cents (\$2.50) per dozen; that notwithstanding that Two Dollars Fifty Cents (\$2.50) per dozen was the highest price charged for diapers during the month of March, 1942, and the defendant's maximum price therefor, the defendant listed in its Base Period and Cost-of-Living Commodity Statements a highest maximum price for diapers of Two Dollars Seventy-five Cents (2.75) per dozen, and that the defendant thereby falsely represented in its Base Period and Cost-of-Living Commodity Statements the maximum price for diapers, contrary to Sections 1499.11 and 1499.13 of the General Maximum Price Regulation and contrary to the provisions of Section 202(b) of the "Act." [18]

n.(3) In the alternative to n.(1) and n.(2), *supra*, the defendant sold, and offered for sale, during the month of March, 1942, kinds, qualities, and sizes of

diapers at prices other than One Dollar Ninety-five Cents (\$1.95), Two Dollars Twenty-five Cents (\$2.25), and Two Dollars Seventy-five Cents (\$2.75) per dozen, the prices shown in the Base Period and Cost-of-Living Commodity Statements, and failed, neglected, and refused to include such other kinds, qualities, and sizes of diapers in its Base Period Statement in violation of Section 1499.11 of the General Maximum Price Regulation.

p.(1) That during the month of March, 1942, the highest price at which the defendant sold, or offered for sale, burlap yard goods, was the sum of twenty-nine cents (29c) per yard; that during the month of March, 1943 the defendant offered for sale the same kind and quality of burlap at a price of forty-five cents (45c) per yard, such price being in excess of the highest price charged for such burlap during the month of March, 1942, and that the defendant thereby violated Sections 1499.1 and 1499.2 of the General Maximum Price Regulation and the "Act."

p.(2) That the highest price at which the defendant sold, or offered for sale, burlap yard goods during the month of March, 1942, was the sum of twenty-nine cents (29c) per yard; that notwithstanding that twenty-nine cents (29c) per yard was the highest price charged for burlap during the month of March, 1942, and the defendant's maximum price therefor, the defendant stated in its Base Period Statement that the maximum price for burlap was forty-five cents (45c) per yard, and that the defendant thereby falsely represented in its Base Period Statement the maximum price for burlap, **contrary**

to Section 1499.11 of the General Maximum Price Regulation and contrary to the provisions of Section 202(b) of the "Act."

p.(3) In the alternative to p(1) and p(2), *supra*, the defendant sold, [19] or offered for sale, during the month of March, 1942, kinds, qualities, and widths of burlap at prices lower than forty-five cents (45c) per yard, the price shown in the Base Period Statement, and failed, neglected, and refused to include the less expensive kinds, qualities, and widths of burlap in its Base Period Statement in violation of Section 1499.11 of the General Maximum Price Regulation.

q.(1) That the highest price charged for sateen, a yard goods, during the month of March, 1942, was the sum of forty-five cents (45c) per yard; that during the month of February, 1943 the defendant sold, or offered for sale, sateen, a yard goods, at fifty-nine cents (59c) per yard, such price being in excess of the highest price charged for sateen, a yard goods, during the month of March, 1942; and that the defendant thereby violated Sections 1499.1 and 1499.2 of the General Maximum Price Regulation and the "Act."

r.(1) That during the month of March, 1942, the highest price at which the defendant sold, or offered for sale, ticking, a yard goods, was the sum of fifty cents (50c) per yard; that during the month of February, 1943, the defendant sold ticking at the prices of sixty-five cents (65c) and sixty-nine cents (69c) per yard, such prices being in excess of the highest price charged for said ticking during the month of March, 1942, and that the defendant there-

by violated Sections 1499.1 and 1499.2 of the General Maximum Price Regulation and the "Act."

r.(2) That the highest price at which the defendant sold, or offered for sale, ticking, a yard goods, during the month of March, 1942, was the sum of Fifty cents (50c) per yard; that notwithstanding that fifty cents (50c) per yard was the highest price charged for ticking during the month of March, 1942, and the defendant's maximum price therefor, [20] the defendant stated in its Base Period Statement and Cost-of-Living Commodity Statement that the highest maximum price for ticking was sixty-nine cents (69c) per yard, and that the defendant thereby falsely represented in its Base Period and Cost-of-Living Commodity Statements the maximum price for some kinds, qualities, or widths of ticking, contrary to Sections 1499.11 and 1499.13 of the General Maximum Price Regulation and contrary to the provisions of Section 202(b) of the "Act."

r.(3) In the alternative to r(1) and r(2), supra, the defendant, during the month of March, 1942, sold, or offered for sale, kinds, qualities, and widths of ticking at prices other than thirty-five cents (35c), sixty-five cents (65c), and sixty-nine cents (69c) per yard, the prices shown in the Cost-of-Living Commodity Statement and Base Period Statement, and failed, neglected, and refused to include said other kinds, qualities, and widths of ticking in its Base Period Statement in violation of Section 1499.11 of the General Maximum Price Regulation and the "Act."

XIV.

Plaintiff alleges on information and belief that since the 18th day of May, 1942, defendant has sold, and offered for sale, commodities, for which maximum selling prices are established by the General Maximum Price Regulation, and has failed and neglected to keep records showing the basis upon which it determined the maximum selling prices of such commodities, contrary to the provisions of Section 1499.12 of the General Maximum Price Regulation and the "Act."

Wherefore, plaintiff prays judgment as follows:

1. That the license granted by Section 1499.16 of the General Maximum Price Regulation to defendant as a condition of selling at retail the commodities for which maximum prices are established by the General Maximum Price Regulation, and by other price regulations of the Office of [21] Price Administration making applicable the provisions of said Section 1499.16, be suspended for a period not to exceed twelve months.

2. That the defendant, its officers, agents, employees, and all other persons acting with or on behalf of the defendant, be enjoined from directly or indirectly selling, or offering to sell, all commodities with respect to which said license to sell is suspended, during the period of suspension.

3. That in the alternative to the relief demanded in paragraphs numbered 1. and 2. hereof, defendant, its officers, agents, employees, and all other persons acting with or on behalf of the de-

fendant, be permanently enjoined and restrained from:

(a) Selling, delivering, or offering for sale or delivery, any commodity in violation of the General Maximum Price Regulation, as heretofore or hereafter amended or revised, and attempting or agreeing to anything in violation thereof, or in violation of any regulation adopted pursuant to said Section 2(a) of the "Act."

(b) Failing to mark and post the maximum prices of cost-of-living commodities sold, or offered for sale, by defendant, and from failing to keep, and file with the appropriate War Price and Rationing Board, complete and accurate records, as required by the General Maximum Price Regulation, as heretofore or hereafter amended or revised, or by any other regulation adopted pursuant to Section 202(b) of the "Act", requiring the making or keeping of records or the making of reports.

4. That an order to show cause issue herein, directed to the defendant, and requiring that it appear before this Court, on a day certain, then and there to show cause, if any it has, why an order should not be made herein enjoining and restraining defendant from committing any of the acts set forth in sub-paragraphs (a) and (b) of paragraph numbered 3. of this prayer for relief during the pendency of this action, and that upon the hearing of said order to show cause an order be made in accordance herewith. [22]

5. That plaintiff have such other and further relief as to the Court may seem equitable and just in the premises.

RUSSELL E. SMITH
WESLEY W. WERTZ
CLARENCE E. WOHL

Attorneys for Plaintiff.

Room 321, Placer Hotel, Helena, Montana. [23]

EXHIBIT "A"

Office of Price Administration
Region VII
Denver, Colorado

WARNING NOTICE

To: Sanden & Ferguson Company
111 North Main Street
Helena, Montana

By the provisions of Section 16 of the General Maximum Price Regulation you were granted a license as a condition of selling, at wholesale or retail, any commodity or commodities with respect to which such licensing provisions are applicable.

In the Judgment of the undersigned, Regional Administrator of Region VII of the Office of Price Administration:

1. You failed to prepare on or before July 1, 1942 and keep for examination a statement showing the highest prices charged by you for those commodities for which maximum prices are established by the General Maximum Price Regula-

tion and which you delivered during the month of March, 1942, and showing the prices at which you offered to deliver such commodities during that month, together with an appropriate description or identification of each such commodity, thereby violating Section 11(b) of the General Maximum Price Regulation and the provisions of the license granted you under Section 16 of the General Maximum Price Regulation.

2. You failed to file on or before July 1, 1942, with your War Price and Rationing Board, a statement showing your maximum price for each cost-of-living commodity offered for sale by you at retail, thereby violating Section 13 (b) of the General Maximum Price Regulation and the provisions of the license granted you under Section 16 of the General Maximum Price Regulation.

3. You failed on or about December 28, 1942, to have posted or marked in your premises in a manner plainly visible to and understandable by the purchasing public, the maximum price of each cost-of-living commodity offered for sale by you at retail, thereby violating Section 13 (a) of the General Maximum Price Regulation and the provisions of the license granted you under Section 16 of the General Maximum Price Regulation.

Notice is further given if, after receipt of this warning notice, you violate any provisions of your license, or any provisions of any regulations, incidental order, or requirement with respect to which your license is applicable, proceedings may be instituted in a court of competent jurisdiction for an

order suspending your license to sell at wholesale or retail any commodities to which your license is applicable.

This warning notice is sent to you pursuant to the provisions of Section 205(f)(2) of the Emergency Price Control Act of 1942 and under the authority conferred upon the Regional Administrator by General Order No. 27 (7 F.R. 5480, 8797, 9053, and 9908).

/s/ CLEM W. COLLINS

Regional Administrator

Jan. 14, 1943

[Endorsed]: Filed July 13, 1943. [24]

Therefore, on August 2, 1943, Defendant's Motion for a More Definite Statement or Bill of Particulars, was duly filed herein, in the words and figures following, to-wit: [25]

[Title of District Court and Cause.]

MOTION FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS.

Comes now the defendant above named and moves this Honorable Court that an order be made requiring the plaintiff herein to furnish the defendant a more definite statement or bill of particulars of allegations of plaintiff's complaint, for the following reasons, and upon the following grounds, to-wit:

1. That paragraph XIII, portions designated "a" and "b", on pages 6 and 7 of said Complaint is uncertain, ambiguous, indefinite, so that defendant is unable to ascertain which commodities or cost-of-living commodities said plaintiff is referring to as defendant has hundreds of commodities or cost-of-living commodities in its store; that paragraph XIII, portion designated "c" is uncertain, ambiguous, indefinite, in that the details of time, circumstances of transactions, or events alleged cannot be ascertained, or the grades or quality of the cost-of-living commodities alleged sold cannot be determined by the allegations and so defendant cannot prepare a responsive pleading or generally prepare for trial; said complaint does not show what maximum prices or ceiling prices were not displayed or posted, so defendant does not know what to look for or what to reply to in preparing pleading. [26]

2. That paragraph XIII, Subdivision "d (1)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the details of time, circumstances of transactions or events, or names of purchasers of said gingham, or whether said gingham was sold or just offered for sale and what quality, grade, or width was sold or offered for sale to prepare a responsive pleading or generally prepare for trial.

3. That paragraph XIII, Subdivision "d (2)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to allegations of false representations in

its Base Period and Cost-of-Living commodity statements as to the price at the time of taking inventory or filing, or as to qualities or widths or kind of gingham or stock on hand at time of preparing or filing commodity statements, so as to prepare a responsive answer or reply or to generally prepare for trial.

4. That paragraph XIII, Subdivision "d (3)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to the allegations concerning failure, negligence and refusal to include the less expensive kinds, qualities and widths of gingham in its Base Period statement, so as to prepare a responsive answer or to generally prepare for trial; that Subdivision "d (3)" is uncertain, ambiguous, indefinite, that the defendant cannot ascertain the details of time, circumstances of transactions, or events, or names of purchasers of said gingham, or whether the transactions were sales or just offers of sale and what qualities or widths, or weights, or colors of gingham were sold or offered for sale in March, 1942 and what the prices were, so that defendant cannot prepare a responsive answer or generally prepare for trial. [27]

5. That paragraph XIII, Subdivision "e (1)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the details of time, circumstances of transactions or events, or names of purchasers of said denim, or whether said denim was sold or just offered for sale and what quality, grade, or width was sold or offered

for sale to prepare a responsive pleading or generally prepare for trial.

6. That paragraph XIII, Subdivision "e (2)" of said complaint is uncertain, ambiguous, indefinite so that defendant cannot ascertain the particulars as to allegations of false representations in its Base Period and Cost-of-Living commodity statements as to the price at the time of taking inventory or filing, or as to qualities or widths or kind of denim or stock on hand at time of preparing or filing commodity statements, so as to prepare a responsive answer or reply or to generally prepare for trial.

7. That paragraph XIII, Subdivision "e (3)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to the allegations concerning failure, negligence and refusal to include the less expensive kinds, qualities and widths of denim in its Base Period statement, so as to prepare a responsive answer or to generally prepare for trial; that Subdivision "e (3)" is uncertain, ambiguous, indefinite, that the defendant cannot ascertain the details of time, circumstances of transactions, or events, or names of purchasers of said denim, or whether the transactions were sales or just offers of sale and what qualities or widths or weights, or colors of denim were sold or offered for sale in March, 1942, and what the prices were, so that defendant cannot prepare a responsive answer or generally prepare for trial. [28]

8. That paragraph XIII, Subdivision “f (1)” of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the details of time, circumstances of transactions or events, or names of purchasers of said challis, or whether said challis was sold or just offered for sale and what quality, grade, or width was sold or offered for sale to prepare a responsive pleading or generally prepare for trial.

9. That paragraph XIII, Subdivision “f (2)” of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to allegations of false representations in its Base Period and Cost-of-Living commodity statements as to the price at the time of taking inventory or filing, or as to qualities or widths or kind of challis or stock on hand at time of preparing or filing commodity statements, so as to prepare a responsive answer or reply or to generally prepare for trial.

10. That paragraph XIII, Subdivision “f (3)” of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to the allegations concerning failure, negligence and refusal to include the less expensive kinds, qualities and widths of challis in its Base Period statement, so as to prepare a responsive answer or to generally prepare for trial; that Subdivision “f (3)” is uncertain, ambiguous, indefinite, that the defendant cannot ascertain the details of time, circumstances of transactions, or events, or names of purchasers of said challis, or whether the

transactions were sales or just offers of sale and what qualities or widths or weights, or colors of challis were sold or offered for sale in March, 1942, and what the prices were, so that defendant cannot prepare a responsive answer or generally prepare for trial. [29]

11. That paragraph XIII, Subdivision "g (1)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the details of time, circumstances of transactions or events, or names of purchasers of said spun rayon, or whether said spun rayon was sold or just offered for sale in March, 1942 and what the prices were and what quality, grade, or width was sold or offered for sale to prepare a responsive pleading or generally prepare for trial.

12. That paragraph XIII, Subdivision "h (1)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the details of time, circumstances of transactions or events, or names of purchasers of said eylette, or whether said eylette was sold or just offered for sale and what quality, grade, or width was sold or offered for sale to prepare a responsive pleading or generally prepare for trial.

13. That paragraph XIII, Subdivision "h (2)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to allegations of false representations in its Base Period and Cost-of-Living commodity statements as to the price at the time of taking inventory or filing, or as to qualities or widths or kinds

of eylette or stock on hand at time *or* preparing or filing commodity statements, so as to prepare a responsive answer or reply or to generally prepare for trial.

14. That paragraph XIII, Subdivision “h (3)” of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to the allegations concerning failure, negligence and refusal to include the less expensive kinds, qualities and widths of eylette in its Base Period statement, so as to prepare a responsive answer or to generally prepare for trial; that Subdivision [30] “h (3)” is uncertain, ambiguous, indefinite, that the defendant cannot ascertain the details of time, circumstances of transactions, or events, or names of purchasers of said eylette, or whether the transactions were sales or just offers of sale and what qualities or widths or weights, or colors of eylette were sold or offered for sale in March, 1942, and what the prices were, so that defendant cannot prepare a responsive answer or generally prepare for trial.

15. That paragraph XIII, Subdivision “i (1)” of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the details of time, circumstances of transactions or events, or names of purchasers of said gabardine, or whether said gabardine was sold or just offered for sale and what quality, grade, or width was sold or offered for sale to prepare a responsive pleading or generally prepare for trial.

16. That paragraph XIII, Subdivision "i (2)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to allegations of false representations in its Base Period and Cost-of-Living commodity statements as to the price at the time of taking inventory or filing, or as to qualities or widths or kind of gabardine or stock on hand at time of preparing or filing commodity statements, so as to prepare a responsive answer or reply or to generally prepare for trial.

17. That paragraph XIII, Subdivision "i (3)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to the allegations concerning failure, negligence and refusal to include the less expensive kinds, qualities and widths of gabardine in its Base Period statement, so as to prepare a responsive answer or to generally prepare for trial; that Subdivision [31] "i (3)" is uncertain, ambiguous, indefinite, that the defendant cannot ascertain the details of time, circumstances of transactions, or events, or names of purchasers of said gabardine, or whether the transactions were sales or just offers of sale and what qualities or widths or weights, or colors of gabardine were sold or offered for sale in March, 1942, and what the prices were, so that defendant cannot prepare a responsive answer or generally prepare for trial.

18. That paragraph XIII, Subdivision "j (1)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the details

of time, circumstances of transactions or events, or names of purchasers of said jersey, or whether said jersey was sold or just offered for sale in March, 1942 and what the prices were and what quality, grade, or width was sold or offered for sale to prepare a responsive pleading or generally prepare for trial.

19. That paragraph XIII, Subdivision "k (1)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the details of time, circumstances of transactions or events, or names of purchasers of said overalls, or whether said overalls were sold or just offered for sale and what qualities, kinds, or grades, or sizes were sold or offered for sale to prepare a responsive pleading or generally prepare for trial.

20. That paragraph XIII, Subdivision "k (2)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to allegations of false representations in its Base Period and Cost-of-Living commodity statements as to the price at the time of taking inventory or filing, or as to qualities or sizes or kinds of overalls or stock on hand at time of preparing or filing commodity statements, so as to prepare a responsive answer or reply or to generally prepare for trial. [32]

21. That paragraph XIII, Subdivision "l (1)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the details of time, circumstances of transactions or events, or names of purchasers of said Indian Head, or

whether said Indian Head was sold or just offered for sale and what quality, grade, or width was sold or offered for sale to prepare a responsive pleading or generally prepare for trial.

22. That paragraph XIII, Subdivision "1 (2)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to allegations of false representations in its Base Period and Cost-of-Living commodity statements as to the price at the time of taking inventory or filing, or as to qualities or widths or kind of Indian Head or stock on hand at time of preparing or filing commodity statements, so as to prepare a responsive answer or reply or to generally prepare for trial.

23. That paragraph XIII, Subdivision "1 (3)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to the allegations concerning failure, negligence and refusal to include the less expensive kinds, qualities and widths of Indian Head in its Base Period statement, so as to prepare a responsive answer or to generally prepare for trial; that Subdivision "1 (3)" is uncertain, ambiguous, indefinite, that the defendant cannot ascertain the details of time, circumstances of transactions, or events, or names of purchasers of said Indian Head, or whether the transactions were sales or just offers of sale and what qualities or widths or weights, or colors of Indian Head were sold or offered for sale in March, 1942, and what the prices

were, so that defendant cannot prepare a responsive answer or generally prepare for trial. [33]

24. That paragraph XIII, Subdivision "m (1)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the details of time, circumstances of transactions or events, or names of purchasers of said percale, or whether said percale was sold or just offered for sale and what quality, grade, or width was sold or offered for sale to prepare a responsive pleading or generally prepare for trial.

25. That paragraph XIII, Subdivision "m (2)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to allegations of false representations in its Base Period and Cost-of-Living commodity statements as to the price at the time of taking inventory or filing, or as to qualities or widths or kind of percale or stock on hand at time of preparing or filing commodity statements, so as to prepare a responsive answer or reply or to generally prepare for trial.

26. That paragraph XIII, Subdivision "m (3)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to the allegations concerning failure, negligence and refusal to include the less expensive kinds, qualities and widths of percale in its Base Period statement, so as to prepare a responsive answer or to generally prepare for trial; that Sub-

division "m (3)" is uncertain, ambiguous, indefinite, that the defendant cannot ascertain the details of time, circumstances of transactions, or events, or names of purchasers of said percale, or whether the transactions were sales or just offers of sale and what qualities or widths or weights, or colors of percale were sold or offered for sale in March, 1942, and what the prices were, so that defendant cannot prepare a responsive answer or generally prepare for trial. [34]

27. That paragraph XIII, Subdivision "n (1)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the details of time, circumstances of transactions or events, or names of purchasers of said diapers, or whether said diapers were sold or just offered for sale and what quality, grade, kind or sizes were sold or offered for sale to prepare a responsive pleading or generally prepare for trial.

28. That paragraph XIII, Subdivision "n (2)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to allegations of false representations in its Base Period and Cost-of-Living commodity statements as to the price at the time of taking inventory or filing, or as to qualities or sizes or kind of diapers or stock on hand at time of preparing or filing commodity statements, so as to prepare a responsive answer or reply or to generally prepare for trial.

29. That paragraph XIII, Subdivision “n (3)” of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to the allegations concerning failure, negligence and refusal to include the less expensive kinds, qualities and sizes of diapers in its Base Period statement, so as to prepare a responsive answer or to generally prepare for trial; that Subdivision “n (3)” is uncertain, ambiguous, indefinite, that the defendant cannot ascertain the details of time, circumstances of transactions, or events, or names of purchasers of said diapers, or whether the transactions were sales or just offers of sale and what qualities or sizes or weights, or kinds of diapers were sold or offered for sale in March, 1942, and what the prices were, so that defendant cannot prepare a responsive answer or generally prepare for trial. [35]

30. That paragraph XIII, Subdivision “p (1)” of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the details of time, circumstances of transactions or events, or names of purchasers of said burlap, or whether said burlap was sold or just offered for sale and what quality, grade, or width was sold or offered for sale to prepare a responsive pleading or generally prepare for trial.

31. That paragraph XIII, Subdivision “p (2)” of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to allegations of false representations in its

Base Period and Cost-of-Living commodity statements as to the price at the time of taking inventory or filing, or as to qualities or widths or kind of burlap or stock on hand at time of preparing or filing commodity statements, so as to prepare a responsive answer or reply or to generally prepare for trial.

32. That paragraph XIII, Subdivision "p (3)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to the allegations concerning failure, negligence and refusal to include the less expensive kinds, qualities and widths of burlap in its Base Period statement, so as to prepare a responsive answer or to generally prepare for trial; that Subdivision "p (3)" is uncertain, ambiguous, indefinite, that the defendant cannot ascertain the details of time, circumstances of transactions, or events, or names of purchasers of said burlap, or whether the transactions were sales or just offers of sale and what qualities or widths or weights, or colors of burlap were sold or offered for sale in March, 1942, and what the prices were, so that defendant cannot prepare a responsive answer or generally prepare for trial. [36]

33. That paragraph XIII, Subdivision "q (1)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the details of time, circumstances of transactions or events, or names of purchasers of said sateen, or whether said sateen was sold or just offered for sale in March,

1942 and what the prices were and what quality, grade, or width was sold or offered for sale to prepare a responsive pleading or generally prepare for trial.

34. That paragraph XIII, Subdivision "r (1)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the details of time, circumstances of transactions or events, or names of purchasers of said ticking, or whether said ticking was sold or just offered for sale and what quality, grade, or width was sold or offered for sale to prepare a responsive pleading or generally prepare for trial.

35. That paragraph XIII, Subdivision "r (2)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to allegations of false representations in its Base Period and Cost-of-Living commodity statements as to the price at the time of taking inventory or filing, or as to qualities or widths or kind of ticking or stock on hand at time of preparing or filing commodity statements, so as to prepare a responsive answer or reply or to generally prepare for trial.

36. That paragraph XIII, Subdivision "r (3)" of said complaint is uncertain, ambiguous, indefinite, so that defendant cannot ascertain the particulars as to the allegations concerning failure, negligence and refusal to include the less expensive kinds, qualities and widths of ticking in its Base Period statement, so as to prepare a responsive

answer or to generally prepare for trial; that Sub division [37] "r (3)" is uncertain, ambiguous, indefinite, that the defendant cannot ascertain the details of time, circumstances of transactions, or events, or names of purchasers of said ticking, or whether the transactions were sales or just offers of sale and what qualities or widths or weights, or colors of ticking were sold or offered for sale in March, 1942, and what the prices were, so that defendant cannot prepare a responsive answer or generally prepare for trial.

37. That paragraph XIV of said complaint is uncertain, ambiguous, indefinite, as defendant is unable to tell what said allegations refer to or what commodities it refers to or what records defendant has failed or neglected to keep.

Dated this 2nd day of August, A. D., 1943.

PAUL W. SMITH
DAVID R. SMITH

.....

Attorneys for Defendant,
Helena, Montana.

Received copy of within and foregoing Motion for a More Definite Statement or Bill of Particulars, and service duly admitted this 2nd day of August, 1943.

RUSSELL E. SMITH
WESLEY W. WERTZ
CLARENCE E. WOHL

Attorneys for Plaintiff.

[Endorsed]: Filed Aug. 2, 1943. [38]

Thereafter, on November 6, 1943, Objections of Plaintiff to Defendant's Motion for a More Definite Statement or Bill of Particulars, was duly filed herein, in the words and figures following, to-wit: [39]

[Title of District Court and Cause.]

OBJECTIONS OF PLAINTIFF TO DEFENDANT'S MOTION FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS

Comes now the plaintiff above named and files these, his written objections to the granting of defendant's motion on file herein for a more definite statement or bill of particulars, as follows, to-wit:

1. That all of the facts and information demanded of plaintiff by defendant in its said motion are peculiarly within the knowledge of said defendant and are readily available to said defendant so that it is in no way prejudiced in preparing a responsive pleading to plaintiff's complaint or generally preparing for trial.

2. That the granting of paragraphs numbered 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 of defendant's motion would in effect require that plaintiff elect between the alternative forms of pleading set forth in plaintiff's complaint and to which the aforesaid paragraph of defendant's motion are directed.

3. That the allegations contained in plaintiff's

complaint and to which defendant's motion is directed are not uncertain, ambiguous or indefinite.

4. That the granting of defendant's said motion would in effect require that plaintiff set forth allegations of evidence in his said complaint.

5. That plaintiff's complaint is drawn and in compliance with the [40] requirements of Rule 8 of the Federal Rules of Civil Procedure.

That the aforesaid objections are made and based upon the records and file of said cause and upon the written affidavits of Dora C. Clark, Donald I. Creel, and Clarence E. Wohl, which affidavits are attached hereto, marked Exhibits "A" and "B" respectively, and hereof made a part.

PHILIP SAVARESY

CLARENCE E. WOHL

Attorneys for Plaintiff [41]

EXHIBIT "A"

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO MOTION FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS

State of Montana

County of Lewis and Clark—ss.

Dora C. Clark and Donald I. Creel each being first duly sworn, depose and say:

That at all of the times herein mentioned they have been, and now are, Investigators with the Office of Price Administration; that during the period from March 23, 1943, to May 14, 1943, they jointly

made an investigation of the business conducted by the Sanden and Ferguson Company, a corporation, the defendant named in the above entitled action, to determine whether said defendant was in compliance with certain regulations issued by the Office of Price Administration and affecting said defendant's business.

That said investigation included an examination of the Base Period Statement prepared by and in defendant's possession; an examination of the Cost-of-Living Commodity Statement prepared by defendant and filed by it with the Lewis and Clark County War Price and Rationing Board No. 5-1, Helena, Montana, on or about February 1, 1943, a copy of which was incorporated in the aforesaid Base Period Statement; an examination of certain sales slips in defendant's possession which were issued by said defendant during the months of March and April, 1942, and February, 1943, and evidencing sales of commodities made by defendant during said months; an examination of certain purchase invoices in defendant's possession and evidencing the purchase by defendant of [42] certain commodities during the period from September 1, 1942 to March 30, 1943; and several physical inspections of defendant's sales rooms located at 111 North Main Street, Helena, Montana.

That upon the completion of said investigation affiants compiled the information they obtained therefrom in the form of a written report and submitted the same to Messrs. Russell E. Smith and Clarence E. Wohl, two of the attorneys for the

plaintiff in the above action; that all of the information and facts compiled and set forth in said report were obtained from the examination of said Base Period and Cost-of-Living Commodity statements, said sales slips and purchase invoices, said physical inspections of said sales rooms, and from statements made to affiants by Eugene S. Sanden, vice-president of defendant, and Lois Brown and Lydia G. Clarke, two employees of defendant.

DORA C. CLARK

DONALD I. CREEL

Subscribed and sworn to before me this 4th day of September, 1943.

[Seal]

CLARENCE E. WOHL

Notary Public for the State of Montana, residing at
Helena, Montana.

My commission expires January 28, 1945. [43]

EXHIBIT "B"

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO MOTION FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS

State of Montana

County of Lewis and Clark—ss.

Clarence E. Wohl, being first duly sworn, deposes and says:

That he is one of the attorneys for the plaintiff in the above action; that he assisted in the preparation of the complaint on file in said action and has

personal knowledge of the source of information from which the facts were obtained that are alleged in said complaint, and upon which said complaint is predicated.

That the facts alleged in said complaint, and upon which said complaint is predicated, were obtained from a written report of an investigation of defendant's business made by Dora C. Clark and Donald I. Creel, investigators with the Office of Price Administration, during the period from March 23, 1943 to May 14, 1943, and from an examination of the Cost-of-Living Commodity Statement filed by the defendant on or about February 1, 1943, with the Lewis and Clark County War Price and Rationing Board No. 5-1, Helena Montana.

That all of the allegations contained in paragraphs numbered XIII and XIV of plaintiff's complaint are based and predicated solely upon facts appearing in said investigators' report of their investigation of defendant's business, as aforesaid, and which said facts were learned by them from their examination of defendant's Base Period and Cost-of-Living Commodity Statements, sales slips, purchase invoices, physical inspections of defendant's sales rooms, [44] and statements made to said investigators by Eugene S. Sanden, vice-president of defendant, and Lois Brown and Lydia G. Clarke, two employees of defendant.

That all of the allegations alleged in said complaint are based upon facts which are within the knowledge of defendant.

That affiant makes this affidavit in opposition to

the motion of defendant on file herein for a more definite statement or bill of particulars.

CLARENCE E. WOHL

Subscribed and sworn to before me this 8th day of September, 1943.

[Seal] PHILIP SAVARESY

Notary Public for the State of Montana, residing at Helena, Montana.

My commission expires November 19, 1945.

Service of foregoing objections and affidavits, and receipt of true and correct copies thereof, admitted and acknowledged this 6th day of November, 1943.

PAUL W. SMITH

DAVID R. SMITH

Attorneys for Defendant.

[Endorsed]: Filed Nov. 6, 1943. [45]

Thereafter, on November 6, 1943, Motion to Substitute Party Plaintiff was filed herein, in the words and figures following, to-wit: [46]

[Title of District Court and Cause.]

MOTION TO SUBSTITUTE

PARTY PLAINTIFF

Plaintiff moves the Court for an order substituting Chester Bowles as plaintiff herein in place of Prentiss M. Brown, Administrator, Office of Price Administration, on the ground that the term

of office of the said Prentiss M. Brown, as such Administrator, terminated on October 21, 1943; that the said Chester Bowles took office as Acting Administrator, Office of Price Administration, on October 22, 1943, and now holds such office; that there is a substantial need for continuing this action against the defendant above named as more particularly appears from the affidavit of Clarence E. Wohl attached hereto.

Dated this 6th day of November, 1943.

PHILIP SAVARESY

CLARENCE E. WOHL

Attorneys for Plaintiff. [47]

[Title of District Court and Cause.]

AFFIDAVIT OF SUCCESSION TO OFFICE

State of Montana,

County of Lewis and Clark—ss.

Clarence E. Wohl, being first duly sworn, deposes and says:

That he is one of the attorneys of record for the plaintiff in the above entitled action; that heretofore, and during the pendency of said action, Prentiss M. Brown, Administrator, Office of Price Administration, plaintiff above named, resigned as such administrator, which said resignation became effective on October 21, 1943; that Chester Bowles was duly appointed as Acting Administrator of Office of Price Administration, and entered upon

and assumed the duties of said office on October 22, 1943, and ever since said date has been, and now is, the Acting Administrator, Office of Price Administration;

That there is substantial need for continuing and maintaining said action and obtaining an adjudication of the questions involved for the reason that in said action said defendant is charged with having violated the terms and provisions of the Emergency Price Control Act of 1942 (56 Stat. 23; 50 U.S.C.A. Sec. 901-946) as amended (Pub. L. 729, 77th Cong., 2d Sess. c. 578), and that not to continue said action would permit said defendant to engage in business practices in violation of said Act which tend toward inflation and would interfere with the United States in its war efforts and program.

CLARENCE E. WOHL

Subscribed and sworn to before me this 6th day of November, 1943.

[Seal] PHILIP SAVARESY,
Notary Public for the State of Montana, Residing
at Helena, Montana.

My Commission expires Nov. 19, 1943.

Service of the foregoing motion and receipt of true and correct copy thereof, admitted and acknowledged this 6th day of November, 1943.

PAUL W. SMITH

DAVID R. SMITH

Attorneys for Defendant.

[Endorsed]: Filed Nov. 6, 1943. [48]

Thereafter, on November 6, 1943, Stipulation for Substitution of Party Plaintiff was filed herein, in the words and figures following, to-wit: [49]

[Title of District Court and Cause.]

STIPULATION FOR SUBSTITUTION
OF PARTY PLAINTIFF

It Is Hereby Stipulated and Agreed, by and between the parties hereto, acting by and through their respective counsel of record, that Chester Bowles, Acting Administrator, Office of Price Administration, may be substituted in the place and stead of Prentiss M. Brown, as the plaintiff in the above entitled action, and said action may be continued and maintained by the said Chester Bowles as such Acting Administrator.

Dated this 6th day of November, 1943.

PAUL W. SMITH

DAVID R. SMITH

Attorneys for Defendant.

PHILIP SAVARESY

CLARENCE E. WOHL

Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 6, 1943. [50]

Thereafter, on November 9, 1943, an order granting plaintiff's motion to substitute party plaintiff was entered herein, the minute entry of such order being as follows, to-wit: [51]

[Title of District Court and Cause.]

This cause was duly called for hearing this day on defendant's motion for more definite statement or bill of particulars and plaintiff's objections thereto, and on plaintiff's motion to substitute party plaintiff in accordance with written stipulation on file, Mr. Clarence E. Wohl being present and appearing for the plaintiff, and Mr. Paul W. Smith being present and appearing for the defendant.

Thereupon Court ordered that plaintiff's motion to substitute party plaintiff be and is granted pursuant to stipulation on file.

Entered in open Court at Helena, Montana, November 9, 1943.

C. R. GARLOW,
Clerk. [52]

Thereafter, on December 7, 1943, the Court's Order Denying Defendant's Motion for a More Definite Statement or a Bill of Particulars, was duly filed and entered herein, in the words and figures following, to-wit: [53]

[Title of District Court and Cause.]

ORDER DENYING DEFENDANT'S MOTION
FOR A MORE DEFINITE STATEMENT
OR A BILL OF PARTICULARS

Defendant moves "that an order be made requir-

ing the Plaintiff herein to furnish the Defendant a more definite statement or bill of particulars of allegations of Plaintiff's Complaint."

The motion does not "point out * * * the details desired" as required by Rule 12 (e) of the Federal Rules of Civil Procedure. The result is that the Court cannot determine with certainty what added information Defendant desires; and, if the motion were granted, the Plaintiff could not know definitely what added information it would be required to furnish.

It follows that Defendant's motion for a more definite statement or a bill of particulars should be and it is hereby denied in its entirety. It is further ordered that the Defendant shall have and it is hereby granted ten (10) days after service upon it of written notice of this ruling in which to serve upon the Plaintiff and file its Answer to the Complaint herein if so advised.

Done in open court at Butte, Montana, December 7, 1943.

JAMES H. BALDWIN

United States District Judge
District of Montana

[Endorsed]: Filed & Ent. Dec.7, 1943. [54]

Thereafter, on December 20, 1943, Defendant filed its Answer herein, in the words and figures following, to-wit: [55]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant above named, and in answer to the complaint of the plaintiff on file herein admits, denies and alleges as follows:

I.

Alleges that the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Montana, with its principal place of business at Helena, Montana.

II.

Denies each and every allegation contained in paragraph I of said complaint.

III.

Denies each and every allegation contained in paragraph II of said complaint.

IV.

Admits the allegation contained in paragraphs III and IV of said complaint.

V.

Denies each and every allegation contained in paragraph V of said complaint.

VI.

Alleges that it has not sufficient information to form a belief as to the allegations set forth in paragraph VI of said complaint, and therefore denies the same. [56]

VII.

Admits that the defendant has operated and operates a store at 111 North Main Street, Helena, Montana, is now selling at retail from said store yard goods, wearing apparel, sheets, pillow cases, towels, bias tape, overalls, diapers, mattresses and other commodities, but denies that there have been any maximum prices established on said commodities by the general maximum price regulation or any other price regulations of the Office of Price Administration; Admits that defendant was granted a license by the Office of Price Administration, but denies each and every other allegation contained in said paragraph VII.

VIII.

Admits that defendant received by registered mail the said notice set forth in paragraph VIII of said complaint, but denies that said defendant violated any of the provisions of said license or the provisions of any lawful regulation, schedule, order or requirement with respect to which said license is applicable.

IX.

Denies each and every allegation contained in paragraphs IX, X, XI and XII of said complaint, and alleges that the regulations set forth in said paragraphs do not conform to the Emergency Price Control Act of 1942 in that said regulations exceed the authority granted by said Emergency Price Control Act of 1942 as said regulations provide that no person can sell any commodity at a price higher

than a price charged by the seller for the commodity or similar commodity during March 1942 and Section 902 Tit. 50 U.S.C.A. provides that "Whenever in the judgment of the Price Administrator the price or prices of a commodity or commodities have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act, he may by regulation or order establish such maximum price or maximum prices as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act;" alleges that the purposes of the Act are defined in Section 901 Tit. 50 U.S.C.A. "To stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents;" alleges that said act does not provide for the defining of cost of living commodities and the filing of statements and amend- [57] ments thereto of prices and descriptions of all commodities; alleges that said regulations are contrary to the provisions of article I, paragraph I of the Constitution of the United States in that said regulations are a usurpation on the power of Congress as said regulations are illegal legislation and the Constitution of the United States provides that Congress shall have the power to legislate; alleges that said regulations are contrary to the provisions of Amendment 5 to the Constitution of the United States in that said regulations deprive defendant of liberty and property without due process of law as said defendant is unable to carry on his business because of the expense and lack of help to comply with said regulations.

X.

As to paragraph XIII of said complaint, the defendant admits that it prepared a base period statement as required by Section 1499.11 (b) of said regulation, and filed said statement with the War Price and Rationing Board 5-1 Helena, Montana as required by Section 1499.13 (b), but denies each and every other allegation contained in said paragraph XIII.

XI.

Denies each and every allegation contained in paragraph XIV of said complaint.

XII.

Alleges that said complaint does not state facts sufficient to constitute or state a cause of action on which relief can be granted in that there is no showing that in the judgment of the Price Administrator it was necessary to establish maximum prices on the commodities set forth in said complaint as sold by defendant and that said Price Administrator complied with the provisions of said Emergency Price Control Act in establishing maximum prices on said commodities.

XIII.

Denies each and every allegation in said complaint not herein specifically admitted or denied.

Wherefore, the defendant having fully answered the complaint of the plaintiff on file herein, defendant prays that said action be dismissed, and [58] that defendant have such other and further relief

as to the court may seem equitable and just in the premises.

PAUL W. SMITH

DAVID R. SMITH

Attorneys for Defendant,
Helena, Montana.

Service duly admitted, and copy of within and foregoing Answer received this 20th day of December, A. D., 1943.

CLARENCE E. WOHL

Attorneys for Plaintiff.

[Endorsed]: Filed December 20, 1943. [59]

Thereafter, on December 22, 1943, Plaintiff's motion to strike from Defendant's answer was filed herein, in the words and figures following, to-wit:

[60]

[Title of District Court and Cause.]

MOTION TO STRIKE

Comes now the plaintiff above named, and with respect to defendant's answer on file herein, moves the court as follows, to-wit:

I.

To strike each and all of the following allegations contained in Paragraph No. IX thereof:

“and alleges that the regulations set forth in said paragraphs do not conform to the Emergency Price Control Act of 1942 in that said regulations exceed the authority granted by

said Emergency Price Control Act of 1942 as said regulations provide that no person can sell any commodity at a price higher than a price charged by the seller for the commodity or similar commodity during March 1942 and Section 902 Tit. 50 U.S.C.A. provides that 'Whenever in the judgment of the Price Administrator the price or prices of a commodity or commodities have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act, he may by regulation or order establish such maximum price or maximum prices as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act;' alleges that the purposes of the act are defined in Section 901 Tit. 50 U.S.C.A. 'To stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents;' alleges that said act does not provide for the defining of cost of living commodities and the filing of statements and amendments thereto of prices and descriptions of all commodities; alleges that said regulations are contrary to the provisions of article I, paragraph I of the Constitution of the United States in that said regulations are a usurpation on the power of Congress as said regulations are illegal [61] legislation and the Constitution of the United States provides that Congress shall have the power to legislate; alleges that said regulations are contrary to the provisions of

Amendment 5 to the Constitution of the United States in that said regulations deprive defendant of liberty and property without due process of law as said defendant is unable to carry on his business because of the expense and lack of help to comply with said regulations.”

upon the following grounds and for the following reason separately stated, to-wit:

(a) That said allegations fail to state a defense to plaintiff's complaint.

(b) That said allegations are immaterial.

(c) That said allegations constitute redundant matter.

(d) That this Court is deprived by the Emergency Price Control Act of 1942, of jurisdiction to determine the validity of the General Maximum Price Regulation, and has no jurisdiction to determine its validity.

II.

To strike each and every allegation, matter and thing contained in paragraph XII thereof, upon the following grounds and for the following reasons separately stated, to-wit:

(a) That said allegations fail to state a defense to Plaintiff's complaint.

(b) That said allegations are immaterial.

(c) That said allegations constitute redundant matter.

(d) That this Court is deprived by the Emergency Price Control Act of 1942, of jurisdiction to determine the validity of the General Maximum

Price Regulation, and has no jurisdiction to determine its validity.

GEORGE S. SMITH

PHILIP SAVARESY

CLARENCE E. WOHL

Attorneys for Plaintiff

Room 321, Placer Hotel,

Helena, Montana [62]

Service of the foregoing Motion and receipt of true and correct copy thereof, admitted and acknowledged this 22 day of December 1943.

PAUL W. SMITH

Attorney for Defendant.

DAVID R. SMITH

Attorney for Defendant.

[Endorsed]: Filed December 22, 1943. [63]

Thereafter, on January 8, 1944, an Order denying motion to strike from answer was filed herein, in the words and figures following, to-wit: [72]

District Court of the United States
District of Montana,
Helena Division

No. 173

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff,

v.

SANDEN AND FERGUSEN COMPANY,
Defendant.

ORDER DENYING MOTION TO STRIKE
FROM ANSWER

It is Ordered, and this does order, that Plaintiff's Motion to Strike from Paragraph IX of the Answer of the Defendant on file herein be and the same is hereby denied in its entirety.

Done in open court at Helena, Montana, January 8, 1944.

JAMES H. BALDWIN

United States District Judge
District of Montana

[Endorsed]: Filed Jan. 8, 1944. [73]

Thereafter, on June 29, 1944, the Court's Findings of Fact, Conclusions of Law and Order was filed herein, in the words and figures following, to-wit: [100]

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This cause came duly and regularly on for trial before the Court at Helena, Montana, the Honorable James H. Baldwin, Judge presiding, sitting without a jury. The Plaintiff was represented by its attorneys, Clarence E. Wohl and Philip Savarsey, and the Defendant was represented by its attorneys, Paul W. Smith and David R. Smith.

Oral testimony was heard and certain exhibits were identified and admitted in evidence and at the close of the testimony the parties Plaintiff and Defendant announced that they rested and by agreement of counsel, expressed in open court, the parties litigant were granted time after the completion of the transcript of the proceedings had at the trial herein within which to prepare, serve upon the opposing party, and lodge with the Clerk of the Court memoranda of authorities in support of their contentions and proposed findings of fact and conclusions of law.

The parties litigant filed their memoranda of authorities and proposed findings of fact and conclusions of law within the time allowed, and being fully advised in the premises, the Court finds the facts to be as follows:

FINDINGS OF FACT

1. In the judgment of Plaintiff, formerly Prentiss M. Brown, Administrator, Office of Price Administration, and at present Chester Bowles, Ad-

ministrator, Office of Price Administration, Defendant has engaged in actions and practices which constitute a [101] violation of Section 4 (a) of the Emergency Price Control Act of 1942 (Public Law 421, 77th Congress, 2d session, 56 Stat. 23; 50 United States Codes Annotated, Sections 901-946;) as amended (Public Law 729, 77th Congress, 2d session, c. 578, 56 Stat. 765), hereinafter called the "Act," in that it is charged with having violated the General Maximum Price Regulations issued pursuant to Sections 2 (a) and 202 (b) of the Act;

2. Plaintiff brings this proceeding for an order suspending the license of the Defendant pursuant to the provisions of Section 205 (f) (2) of the Act; and, in the alternative, pursuant to the provisions of Section 205 (a) of the Act to enforce compliance with said Section 4(a) of the Act and to permanently enjoin and restrain defendant, its agents, servants, employees, and all persons in active concert or participation with it, from selling, delivering, or offering for sale or delivery, any commodity in violation of the General Maximum Price Regulation, as heretofore or hereafter amended or revised, and doing, attempting, or agreeing to any thing in violation thereof, or in violation of any regulation adopted pursuant to said Sections 2 (a) and 202 (b) of the Act:

3. Jurisdiction of this proceeding is conferred upon this Court by Sections 205 (c) and 205 (f) 2 of the Act.

4. Defendant's gross sales, at all times material hereto, have exceeded the sum of \$100,000 per year;

5. At all times pertinent hereto the General Maximum Price Regulation (7 Federal Register 3153), which established maximum prices for commodities regulated thereby and provided that no person should sell or deliver any commodity at a price higher than the maximum price established by the regulation, has been in effect pursuant to Sections 2 (a) and 202 (b) of the Act;

6. By the provision of Section 16 of said General Maximum Price Regulation every person selling at wholesale or retail any commodity for which a maximum price is established by said regulation or by any other price regulation of the Office of Price [102] Administration making applicable the provisions of said Section 16 was granted a license as a condition to selling such commodity;

7. At all times material hereto Defendant has operated a store at 111 North Main Street, in the city of Helena, in the state and district of Montana, and has sold and is now selling at retail from said store yard goods, wearing apparel, sheets, pillow cases, towels, bias tape, overalls, diapers, mattresses, and other commodities for which maximum prices are and at all times material hereto were established by said General Maximum Price Regulation and other price regulations of the Office of Price Administration;

8. Defendant was granted a license as a condition to selling such commodities in said store at retail under and pursuant to the provisions of Section 16 of said General Maximum Price Regulation;

9. On or about January 14, 1943, a warning no-

tice was sent by the Office of Price Administration to the Defendant, by registered mail, pursuant to the provisions of Section 205 (f) (2) of the Act, and the same was received by the Defendant at Helena, Montana on or about January 16, 1943;

10. Said warning notice so sent and received as aforesaid is in words and figures as follows:

Office of Price Administration
Region VII
Denver, Colorado
Warning Notice

“To: Sanden & Ferguson Company
111 North Main Street
Helena, Montana

“By the provisions of Section 16 of the General Maximum Price Regulation you were granted a license as a condition of selling, at wholesale or retail, any commodity or commodities with respect to which such licensing provisions are applicable.

“In the judgment of the undersigned, Regional Administrator of Region VII of the Office of Price Administration:

“1. You failed to prepare on or before July 1, 1942 and keep for examination a statement showing the highest prices charged by you for those commodities for which maximum prices are established by the General Maximum Price Regulation and which you delivered during the month of March, 1942, and showing the prices at which you offered to deliver such commodities during that month, to-

gether with an appropriate description or identification of each such commodity, thereby violating Section 11 (b) of the General Maximum Price Regulation and the provisions of the license granted you under Section 16 of the General Maximum Price Regulation. [103]

“2. You failed to file on or before July 1, 1942, with your War Price and Rationing Board a statement showing your maximum price for each cost-of-living commodity offered for sale by you at retail, thereby violating Section 13 (b) of the General Maximum Price Regulation and the provisions of the license granted you under Section 16 of the General Maximum Price Regulation.

“3. You failed on or about December 28, 1942, to have posted or marked in your premises in a manner plainly visible to and understandable by the purchasing public, the maximum price of each cost-of-living commodity offered for sale by you at retail, thereby violating Section 13 (a) of the General Maximum Price Regulation and the provisions of the license granted you under Section 16 of the General Maximum Price Regulation.

“Notice is further given, if, after receipt of this warning notice, you violate any provisions of your license, or any provisions of any regulations, incidental order, or requirement with respect to which your license is applicable, proceedings may be instituted in a court of competent jurisdiction for an order suspending your license to sell at wholesale or retail any commodities to which your license is applicable.

“This warning notice is sent to you pursuant to

the provisions of Section 205 (f) (2) of the Emergency Price Control Act of 1942 and under the authority conferred upon the Regional Administrator by General Order No. 27 (7 F.R. 5480, 8797, 9053, and 9908).

Jan. 14, 1943

/s/ CLEM W. COLLINS

Regional Administrator"

11. Among other things the General Maximum Price Regulation provides as follows:

Section 1499.1 Prohibition Against Dealing in
Commodities or Services Above Maximum
Prices:

On and after the effective date of this General Maximum Price Regulation, regardless of any contract or other obligation:

(a) No person shall sell or deliver any commodity, and no person shall sell or supply any service, at a price higher than the maximum price permitted by this General Maximum Price Regulation;

* * *

Section 1499.2 Maximum Prices for Commodities
and Services: General Provisions:

Except as otherwise provided in this regulation, the seller's maximum price for any commodity or service shall be:

(a) The highest price charged by the seller during March, 1942:

- (1) For the same commodity or service; or
- (2) If no charge was made for the same

commodity or service, for the similar commodity or service most nearly like it; or

(b) If the seller's maximum price cannot be determined under paragraph (a), the highest price charged during March, 1942 by the most closely competitive seller of the same class; [104]

(1) For the same commodity or service; or,

(2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it.

Highest Price Charged During March, 1942:

For the purposes of this General Maximum Price Regulation, the highest price charged by a seller during March, 1942 shall be:

(a) The highest price which the seller charged for a commodity delivered or service supplied by him during March, 1942 to a purchaser of the same class; or

(b) If the seller made no such delivery or supplied no such service during March, 1942, his highest offering price for delivery or supply during that month to a purchaser of the same class; or,

(c) If the seller made no such delivery or supplied no such service and had no such offering price to a purchaser of the same class, the highest price charged by the seller during March, 1942 to a purchaser of a different class, adjusted to reflect the seller's customary differential between the two classes of purchasers: * * * * *

12. Among other things said General Maximum Price Regulation provides as follows:

Section 1499.11 Base-Period Records:

Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation, shall:

(b) Prepare, on or before July 1, 1942, on the basis of all available information and records, and thereafter keep for examination by any person during ordinary business hours, a statement showing:

(1) The highest prices which he charged for such of those commodities or services as he delivered or supplied during March, 1942 and his offering prices for delivery or supply of such commodities or services during such month, together with an appropriate description or identification of each such commodity or service; and,

(2) All his customary allowances, discounts, and other price differentials. * * * * *

13. Among other things said General Maximum Price Regulation provides as follows:

Section 1499.12 Current Records:

Every person selling commodities or services for which, [105] upon sale by that person, maximum prices are established by this General Maximum Price Regulation shall keep, and make available for examination by the Office of Price Administration, records of the same kind as he has customarily kept, relating to the prices which he charged for such of those commodities or services as he sold after the effective date of this General Maximum Price Regulation; and, in addition, records show-

ing, as precisely as possible, the basis upon which he determined maximum prices for those commodities or services.

14. Among other things said General Maximum Price Regulation provides as follows:

Section 1499.13 Maximum Prices of Cost-of-Living Commodities: Statement, Marking or Posting.

For the purposes of this section, a cost-of-living commodity is any commodity designated as such by the Price Administrator. A list of the classes of commodities so designated appears in Section 1499.-25, Appendix B, of this General Maximum Price Regulation.

(a) On and after May 18, 1942, every person offering to sell a cost-of-living commodity at retail shall mark the maximum price of such commodity in a manner plainly visible to, and understandable by, the purchasing public. The maximum price may be marked on the commodity itself, or on the shelf, bin, rack, or other holder or container upon or in which the commodity is kept, or it may be posted at the place in the business establishment where the commodity is offered for sale; Provided, That whichever of the above methods of posting is adopted, the maximum price of each commodity offered for sale shall be plainly visible to the purchaser at the place in the business establishment where the commodity is offered for sale, and shall not be obscured by the posted price of other commodities, whether by use of price books or catalogs or layers of price lists or otherwise or in any other

manner. The maximum price shall be stated as follows: "Ceiling Price \$...;" or "Our Ceiling \$..." Any person choosing to post by price-lines the maximum prices of commodities in the classifications marked by asterisks in Appendix B, shall post the maximum price by price-line at the place in the business establishment where the commodities in such price-line are offered for sale, and, in addition, shall mark the selling price of [106] each such commodity on the commodity itself. * * * * *

(b) On or before July 1, 1942, every person offering to sell cost-of-living commodities at retail shall file with the appropriate War Price and Rationing Board of the Office of Price Administration a statement showing his maximum price for each such commodity, together with an appropriate description or identification of it. Such statement shall be kept up to date by such person by filing on the tenth day of every succeeding month a statement of his maximum price for any cost-of-living commodity newly offered for sale during the previous month, together with an appropriate description or identification of the commodity. * * * * *

15. On or about February 1, 1943, and subsequent to the receipt by it of the warning notice hereinbefore referred to the Defendant prepared a base period statement, on the basis of all available information and records, showing:

(1) The highest prices which it charged for such of those commodities as it delivered during March, 1942, and its offering price for de-

livery of such commodities during such month together with an appropriate description and identification of each of such commodities insofar as the Defendant was able to do so; and,

(2) All its customary allowances, discounts and other price differentials as required by Section 1499.11 of said General Maximum Price Regulation;

16. Continuously for more than fifty (50) years immediately prior to February 1, 1943, the Defendant had operated on a cost basis and not on a permanent inventory basis and therefore did not keep records of the names of manufacturers, lot numbers, descriptions of merchandise, or identification of merchandise as to lot numbers, manufacturers, textures, grades, and so forth;

17. In January, 1943, and prior to Defendant's making its said base period statement and its cost-of-living commodity statement, Eugene Sanden, then Assistant Manager of the Defendant company, went to the Office of Price Administration in the Placer Hotel at Helena, Montana and there interviewed Mr. Loren Anderson and Mr. Stephen T. McDermott, officials in the Office of Price Administration, and told these officials of the difficulties he was having in connection with operating the store and his help problem [107] and that he was unable to furnish some of the information called for by said General Maximum Price Regulation, and they then and there had the understanding that it would be all right for the Defendant to prepare said statements by taking

the merchandise that was in Defendant's store at 111 North Main Street, Helena, Montana at that time, and pursuant to that understanding the Defendant endeavored to list all the merchandise in said store, and did so to the best of its ability;

18. Due to the fact that the Defendant had operated on a cost basis for over fifty years and not on a permanent inventory cash basis as aforesaid, the Defendant did not have some of the information required by said General Maximum Price Regulation such as lot numbers, names of manufacturers, descriptions of merchandise, and identification of merchandise, which had previously been explained to said officials of the Office of Price Administration at the conference held at the Office of Price Administration in the Placer Hotel in Helena, Montana in January, 1943, as aforesaid, and for that reason, and that reason alone, such information was not set out in said base period statement and said cost-of-living commodity statement, or either of them:

19. In February, 1943, when said base period statement and said cost-of-living commodity statement were prepared the Defendant handled and had in its said store for sale approximately four thousand (4,000) different items of merchandise, there was not then as much merchandise in said store as there was in March, 1942; and, new merchandise had come into said store which had replaced a great deal of the merchandise which had been in said store in March, 1942;

20. The merchandise which had come into said store subsequent to March, 1942, and which had replaced a great deal of the merchandise which was in

said store in March, 1942, was of a different quality, grade, width, color, design, and kind;

21. Because of the fact that the Defendant operated on a cost basis and not on a permanent inventory basis the sales slips of merchandise sold by it as indicated by exhibits introduced in evidence during the trial of this case were not marked with lot numbers, grades, widths, and so forth, and as a result it was and is [108] impossible to determine from said sales slips, or any of them, the quality, grade, width, color, design, or kind for the purpose of comparing sales prices shown on such sales slips and prices shown on said base period statement and cost-of-living commodity statement;

22. To require that the Defendant mark sales slips of merchandise sold by it in its said store with lot numbers, grades, widths, and so forth, or the quality, grade, width, color, design, or kind for the purpose of comparing sales prices shown on sales slips and prices shown on its base period statement and cost of living commodity statement would be in operation and effect to use the powers granted in Section 2 of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 24 (Section 902, Title 50, U.S.C.A.) to be used and made to operate to compel changes in its business practices, cost practices, and methods contrary to law. (See Section 2 (h), Emergency Price Control Act of 1942, 56 Stat., p. 27; Sec. 902, Title 50, U.S.C.A.)

23. If the Defendant were compelled by the Plaintiff to furnish in its base period statement and

cost-of-living commodity statement all of the information required by the said General Maximum Price Regulation, the Defendant would have to change its business practices, cost practices, and methods by installing a permanent inventory system which would cost at least \$2,000.00 and require the Defendant to employ two additional bookkeepers and compel the Defendant to close its said place of business because of the additional expense;

24. The base period statement and the cost-of-living commodity statement hereinbefore referred to were carefully made by the Defendant in an honest effort to meet the requirements of said General Maximum Price Regulation;

25. A few sales slips were introduced in evidence during the trial of this case which indicate that the Defendant sold in its said store in March, 1943, merchandise such as Black Bear heavy duck overalls which cost Defendant \$33.00 a dozen in Seattle for the regular sizes, and \$36.30 a dozen for the extra sizes, all [109] of which the Defendant sold below cost, had not been listed on said cost-of-living commodity statement, but in each case the failure to list said merchandise was an error or an oversight and entirely without any intent to violate any provision of said General Maximum Price Regulation;

26. At no time did the Defendant mark up any price on merchandise contained in its said store in March, 1942, and the original tickets showing the price at which such merchandise was offered for

sale and would be delivered in March, 1942, is and at all times has been plainly marked on the commodity itself;

Gingham.

27. Gingham was referred to in the cost-of-living commodity statement, "To February 1, 1943," filed by the Defendant in the Office of Price Administration at Helena, Montana, as aforesaid, in these words:

"Article	Style Number	Manuf.	Description	Maximum Price
Gingham	Golden Rod	Carson		.39"

(Plaintiff's Exhibit No. 1, page 4)

It appears from Plaintiff's Exhibit No. 5, introduced in evidence during the trial of this case, that in March, 1942, Defendant made six sales of gingham, a yard goods,—three at 35c per yard, and 3 at 29c per yard; but, it is not shown that these were the only sales of gingham made by the Defendant in that month;

It appears from Plaintiff's Exhibit No. 6, introduced in evidence during the trial of this case, that in February, 1943, Defendant made three sales of gingham, a yard goods, at 39c per yard;

It appears from Plaintiff's Exhibit No. 25, introduced in evidence during the trial of this case, that in February, 1943, the Defendant received a shipment of gingham from "Butler Brothers, * * * Minneapolis, Minnesota;"

It is not shown that the gingham referred to in said cost-of-living commodity statement and the gingham so sold and delivered by the Defendant in

March, 1942, and February, 1943, or any of them, referred to the same or similar articles or would give the purchaser fairly equivalent serviceability or belonged to a type which would ordinarily sell in the same price line; (see Plaintiff's Exhibit No. 4 [110] pp. 8 and 9) and,

It is shown that there are fifteen or twenty different qualities of gingham (Tr. p. 72, l. 1), that none of the March, 1942, sales slips show the quality, width, or color of the gingham sold (Tr. p. 29, ll. 3-10); and, that the gingham sold by the Defendant in March, 1942, (Plaintiff's Exhibit No. 5) and February, 1943, (Plaintiff's Exhibit No. 6) were not of the same quality. (Tr. p. 63, ll. 4-8)

Denim

28. Denim was referred to in the cost-of-living commodity statement, "To February 1, 1943," filed by the Defendant in the Office of Price Administration at Helena, Montana, as aforesaid, in these words:

"Article	Style No.	Manuf.	Des.	Max. Price
Denim	5028	Sehenek	colored	.45
"	overall	Butler	blue	.35

(Plaintiff's Exhibit No. 1, page 9)

It appears from Plaintiff's Exhibit No. 7, introduced in evidence during the trial of this case that in March, 1942, Defendant made two sales of denim, a yard goods, one at 29c per yard, and the other at 39c per yard; but, it is not shown that these were

the only sales of denim made by the Defendant in that month;

It appears from Plaintiff's Exhibit No. 8, introduced in evidence during the trial of this case, that in February, 1943, Defendant made six sales of denim, a yard goods, one at 45c per yard, four at 35c per yard, and one at 29c per yard;

It is shown that there are ten or fifteen ranges in this class of goods, each differing in quality and use from all the others; (Tr. p. 68, l. 26, to p. 69, l. 11), that at the time said cost-of-living commodity statement (Plaintiff's Exhibit No. 1) was prepared the Defendant listed every kind of denim that it then had on its shelves, and that between March, 1942, and February, 1943, the Defendant may have received some of the other types of denim and put them on the shelves in its said store; (Tr. p. 69, l. 15 to 24)

It is not shown that the denim referred to in said cost-of-living commodity statement and the denim so sold and delivered by the Defendant [111] in March, 1942, and February, 1943, or any of them, referred to the same or similar articles or would give the purchaser fairly equivalent serviceability or belonged to a type which would ordinarily sell in the same price line; (see Plaintiff's Exhibit No. 4, pp. 8 and 9 and,

None of the March, 1942, sales slips (Plaintiff's Exhibit No. 7) or the February, 1943, sales slips (Plaintiff's Exhibit No. 8) show in which of said ten or fifteen ranges the merchandise sold falls.

Challis

29. Challis was referred to in the cost-of-living commodity statement, "To February 1, 1943," filed by the Defendant in the Office of Price Administration at Helena, Montana, as aforesaid, in these words:

"Article	Style-Lot	Manuf.	Des.	Max. Price
Chali	5904	C.P.S.	Figured	.32"

(Plaintiff's Exhibit No. 1, page 9)

It appears from Plaintiff's Exhibit No. 9, introduced in evidence during the trial of this case, that in March, 1942 the Defendant made one sale of challis at 25c per yard;

No sale of challis is shown to have been made by the Defendant at any other time.

Spun Rayon

30. In the cost-of-living commodity statement filed by the Defendant in the Office of Price Administration at Helena, Montana, as aforesaid, under the heading "rayon goods," the Defendant listed twenty-three different items in words and figures as follows:

"Article	Style No.	Manuf.	Des.	Max. Price
Rayon Goods		W.B.Co.	colored	.59
"		CPS	Printed	.89
"		Belding	"	.89
"		Butlers	"	.59
"	Sheer	Belding	"	1.00
"		"	"	1.00
"		Butlers	Plain	.59
"		Belding	"	.89
"	Sheer	"	"	.89

"Article	Style No.	Manuf.	Des.	Max. Price
Rayon Goods		Belding	Plain	1.00
"	"	"	"	1.19
"	"	"	"	1.29
"		Schinek	Satin	.59
"		"	"	.89
"		"	Taffatte	.79
"		Butler	Sharkskin	.89
"		"	Doeskin	.89
"		Belding	Satin Plain	1.25
"		"	Plaid	.98
"	T65	Schenck	Plain	1.65
"	875	Belding	"	1.00
"	Gaberdine	"	"	.89
"	"	"	"	1.19"

(Plaintiff's Exhibit No. 1, page 3) [112]

It appears from Plaintiff's Exhibit No. 10, introduced in evidence during the trial of this case, that in March, 1942, the Defendant made two sales of "spun Rayon," a yard goods,—one at 79c per yard, and the other at 59c per yard;

It is not shown that the rayon so sold as evidenced by Plaintiff's Exhibit No. 10 does not fall within the rayon goods described in said cost-of-living commodity statement;

It appears from Plaintiff's Exhibit No. 25, introduced in evidence during the trial of this case, that on February 2, 1943, Butler Brothers of Minneapolis, Minnesota shipped to the Defendant at Helena, Montana sixty-three yards of "spun rayon;"

It appears from Plaintiff's Exhibit No. 11, introduced in evidence during the trial of this case, that in February, 1943, defendant made two sales of "spun rayon," a yard goods, at 89c per yard.

It is not shown that the rayon goods mentioned in said cost-of-living commodity statement and the "spun rayon" so sold and delivered by the Defendant in March, 1942, and February, 1943, or any of them, referred to the same or similar articles or would give the purchaser fairly equivalent serviceability or belonged to a type which would ordinarily sell in the same price line. See Plaintiff's Exhibit No. 4, pp. 8 and 9)

Indian Head

31. Indian head was referred to in the cost-of-living commodity statement, filed by the Defendant in the Office of Price Administration, Helena, Montana, as aforesaid, in these words:

"Article	Style No.	Manuf.	Des.	Max. Price
Indian H.		Butlers	white-44	.49
"		"	" -54	.59"

(Plaintiff's Exhibit No. 1, page 4)

It appears from Plaintiff's Exhibit No. 17, introduced in evidence during the trial of this case, that in March, 1942, Defendant made six sales of Indian head, a yard goods,—one at 40c per yard, one at 42c per yard, and four at 35c per yard.

The only description of the merchandise so sold as evidenced by each of the sales slips included within said Exhibit No. 17 is as follows: "I. head."

It appears from Plaintiff's Exhibit No. 18, introduced in evidence [113] during the trial of this case, that in February, 1943, Defendant made six sales of Indian head,—three at 50c per yard, one at 46c per yard, and two at 59c per yard;

The only description of the merchandise so sold as evidenced by each of the sales slips included within said Exhibit No. 18 is as follows: "I. head."

It is shown that there are six different widths, colors, and qualities of indian head and that the widths, colors, and qualities govern the price of the merchandise. (Tr. p. 73)

It is not shown that the indian head referred to in said cost-of-living commodity statement and the indian head so sold and delivered by the Defendant in March, 1942, and February, 1943, or any of them, referred to the same or similar articles or would give the purchaser fairly equivalent serviceability or belonged to a type which would ordinarily sell in the same price line; (see Plaintiff's Exhibit No. 4, pp. 8 and 9) or what the width, color, or quality of any of them was.

Burlap

32. As stated by Plaintiff, "While burlap is not a cost-of-living commodity, and need not have been listed in the cost-of-living commodity statement, Defendant did assume to list it." (Plaintiff's brief herein, p. 39, lines 2 and 3)

The fact is that burlap is not listed in said cost-of-living commodity statement, filed by the Defendant with the Office of Price Administration, Helena, Montana, as aforesaid. (Plaintiff's Exhibit No. 1, and testimony of Donald L. Creel, Plaintiff's witness, Tr. p. 46, lines 21-23)

It appears from Plaintiff's Exhibit No. 22, introduced in evidence during the trial of this case, that

in March, 1942, Defendant made two sales of burlap, a yard goods, at 29c per yard.

Eyelette

33. Eyelette was referred to in the cost-of-living commodity statement, filed by the Defendant in the Office of Price Administration, Helena, Montana, as aforesaid, in these words:

“Article	Style No.	Manuf.	Des.	Max. Price
Eyelette		Robinsons	white	\$1”

(Plaintiff’s Exhibit No. 1, p. 3)

It appears from Plaintiff’s Exhibit No. 12, introduced in evidence [114] during the trial of this case, that as of date ‘3-18” there was sold “1/3 Eyelet 27.”

No other sale of eyelette is shown.

Ticking

34. Ticking, a yard goods, was referred to in the cost-of-living commodity statement, filed by the Defendant in the Office of Price Administration, Helena, Montana, as aforesaid, in these words:

“Article	Style No.	Manuf.	Des.	Max. Price
Ticking	4388	Mitchell F	colored	.65
“	amoskeig	Butlers	plain	.35
“	4504	CPS	plain	.69
“	short length	CPS	figured	.65”

(Plaintiff’s Exhibit No. 1, page 9)

It appears from Plaintiff’s Exhibit No. 21, introduced inevidence during the trial of this case, that in March, 1942, Defendant made six sales of ticking, a yard goods,—four at 50c per yard, one at 35c per yard, and one at 25c per yard.

It is not shown that any other sales of ticking were made by the Defendant.

Percale

35. Percale, a yard goods, was referred to in the cost-of-living commodity statement, filed by the Defendant in the Office of Price Administration, Helena, Montana, as aforesaid, in these words:

“Article	Style No.	Manuf.	Des.	Max. Price
Plain per.	Golden Star	Rice-Stix	80 sq.	.35 yd.”

(Plaintiff’s Exhibit No. 1, page 4)

It appears from Plaintiff’s Exhibit No. 19, introduced in evidence during the trial of this case, that in March, 1942, Defendant made twenty sales of percale, a yard goods,—nineteen at 29c per yard,

It appears from Plaintiff’s Exhibit No. 20, introduced in evidence during the trial of this case, that Defendant made ten sales of percale—two under dates of “2-15” and “2-13” at 35c per yard, seven in February, 1943, of which five were at 35c per yard, and two were at 33c per yard, and one in February, 1944, at 35c per yard.

It is shown that percale is of different qualities, weights, and widths, and falls in different price ranges (Tr. p. 74, lines 4-7), and that the only way in which one can identify the quality and class of goods sold as evidenced by the sales slips included in Exhibit No. 20 is by the price for which the merchandise sold. (Tr. p. 73 lines 28-31) [115]

Gaberdine

36. Gaberdine was referred to in the cost-of-living commodity statement, filed by the Defendant in the Office of Price Administration at Helena, Montana as aforesaid, in these words:

Article	Style No.	Manuf.	Des.	Max. Price
Rayon	Gaberdine	Belding	Plain	.89
"	"	"	"	1.19"

(Plaintiff's Exhibit No. 1, p. 3, lines 45 and 46)

It appears from Plaintiff's Exhibit No. 13, introduced in evidence during the trial of this case, that in March, 1942, Defendant made four sales of gaberdine, a yard goods,—three at 39c per yard, and one at 85c per yard.

It is not shown that these were the only sales of gaberdine made by the Defendant in that month.

It appears that in February, 1943, the Defendant received from Butler Brothers, Minneapolis, Minnesota, a shipment of gaberdine. (Plaintiff's Exhibit No. 25)

It appears from Plaintiff's Exhibit No. 14 that in February, 1943, the Defendant made ten sales of gaberdine,—one at 85c per yard, seven at \$1 per yard, and two at 89c per yard.

It is not shown that the gaberdine referred to in the cost-of-living commodity statement, so filed as aforesaid, and the gaberdine so sold and delivered as aforesaid in March, 1942, and February, 1943, or any of them, referred to the same or similar articles or would give the purchaser fairly equivalent serviceability or belonged to a type which

would ordinarily sell in the same price line; (see Plaintiff's Exhibit No. 4, pp. 8 and 9) and,

It is shown that the sales slips included in Plaintiff's Exhibit No. 14 evidence sales of different qualities of gaberdine and that the sales slips introduced in evidence during the trial of this case as Plaintiff's Exhibit No. 13 evidence sales of different kinds of gaberdine. (Tr. p. 63, lines 9 to 20)

Jersey

37. It appears from Plaintiff's Exhibit No. 15, introduced in evidence during the trial of this case, that in March, 1942, Defendant made four sales of jersey, a yard goods,—two at \$1.65 per yard, and one at 95c per yard, and one at \$1.19 per yard.

It appears from Plaintiff's Exhibit No. 16, introduced in evidence [116] during the trial of this case, that in February, 1943, Defendant made ten sales of jersey at \$1.69 per yard.

It is not shown that the jersey referred to in the cost-of-living commodity statement, so filed as aforesaid, and the jersey so sold and delivered as aforesaid in March, 1942, and February, 1943, or any of them, referred to the same or similar articles or would give a purchaser fairly equivalent serviceability or belonged to a type which would ordinarily sell in the same price line; (See Plaintiff's Exhibit No. 4, pp. 8 and 9)

It is shown that jersey, a yard goods, is a knitted fabric which varies in width, colors, and weight, has different ranges as to price and quality, and that the only way in which one looking at the sales slips

put in evidence during the trial of this case as Plaintiff's Exhibits Nos. 15 and 16 can determine the quality and kind of the jersey sold is by the price. (Tr. pp. 72 and 73)

Overalls

38. Overalls were referred to in the cost-of-living commodity statement, filed by the Defendant in the Office of Price Administration at Helena, Montana as aforesaid, in these words:

" Article	Style Lot	Manuf.	Des.	Mx. Price
Overalls		Crown Special	Extra Heavy	1.50
"		Long Wear	"	1.50
"		Headlight	"	1.50
"		Headlight	Bib Large	2.00
"		Headlight	Bib "	2.50
"		Ruff Rider	Waist	1.50
"		Calf Skin	Bib	1.50
"		Red Kab	Bib	1.50"

(Plaintiff's Exhibit No. 1, p. 15)

It appears from Plaintiff's Exhibit No. 23, introduced in evidence during the trial of this case, that in February, 1943, Defendant made four sales of overalls at \$3 each.

It is not shown that the overalls referred to in said cost-of-living commodity statement and the overalls so sold and delivered by the Defendant in February, 1943, referred to the same or similar articles or would give the purchaser fairly equivalent serviceability or belonged to a type which would ordinarily sell in the same price line. (See Plaintiff's Exhibit No. 4, pp. 8 and 9)

It is shown that at the time said cost-of-living

commodity statement was prepared and filed as aforesaid the overalls sold and delivered in [117] March, 1943, as evidenced by Plaintiff's Exhibit No. 23, were on hand under a shelf in Defendant's said store at 111 North Main Street, Helena, Montana, and that they were overlooked "in the rush" of preparing said cost-of-living commodity statement, so filed by the Defendant in the Office of Price Administration at Helena, Montana as aforesaid; (Tr. p. 84, lines 11 to 13) and that the overalls sold by the Defendant in March, 1943, as evidenced by Plaintiff's Exhibit No. 23, cost the Defendant \$33 a dozen in Seattle for the regular sizes, and \$36.30 a dozen in Seattle for the extra sizes; (Tr. p. 84, lines 25 to 31) and,

It is not shown whether or not the overalls sold by the Defendant at Helena, Montana in February, 1943, as evidenced by Plaintiff's Exhibit No. 23, were regular sizes or extra sizes.

Sateen

39. Sateen, a yard goods, was referred to in the cost-of-living commodity, statement, filed by the Defendant in the Office of Price Administration at Helena, Montana as aforesaid, in these words:

" Article	Style No.	Manuf.	Des.	Max. Price
Sateen		Robinsons	colors	.45"

(Plaintiff's Exhibit No. 1, page 4)

It appears from Plaintiff's Exhibit No. 24, introduced in evidence during the trial of this case, that under date of "2-16" the Defendant sold and delivered "5 yd. sateen 2.95."

It is not shown in what year the sateen referred to in Plaintiff's Exhibit No. 24, introduced in evidence as aforesaid, was sold, or that the sateen referred to in said cost-of-living commodity statement and the sateen sold and delivered by the Defendant as evidenced by Plaintiff's Exhibit No. 24 referred to the same or a similar article or would give the purchaser fairly equivalent serviceability or belonged to a type which would ordinarily sell in the same price line. (See Plaintiff's Exhibit No. 4, pp. 8 and 9) and,

It is shown that sateen, a yard goods, differs in price range, quality, weight, widths, and so forth, (Tr. p. 74, lines 4-7) and that the only way in which one can identify the quality and class of sateen by an inspection of sales slips is by the price charged. (Tr. p. 73, lines 28-30) [118]

40. The Defendant, Sanden and Ferguson Company, a Montana corporation, at all times displayed its ceiling prices for all cost-of-living commodities carried in its store at 111 North Main Street, Helena, Montana, on or near the merchandise and easily visible to customers. (See pp. 22 and 23, Plaintiff's Exhibit No. 4)

41. The Defendant, Sanden and Ferguson Company, a Montana corporation, has at all times endeavored in good faith to comply with and abide by the provisions of the Emergency Price Control Act of 1942, and with each and all of the rules and regulations issued thereunder, including said General Maximum Price Regulation (7 Fed. Reg. 3153) and all acts and regulations supplemental thereto

and amendatory thereof, and intends to and will continue to do so at all times in the future;

42. It is not shown that the Defendant, Sanden and Ferguson Company, a Montana corporation, ever at any time or at all engaged, or that it is about to engage, in any act or practice contrary to the provisions of the Emergency Price Control Act of 1942, or any rule or regulation issued thereunder, including said General Maximum Price Regulation (7 Fed. Reg. 3153), or any regulation supplemental thereto or amendatory thereof; and,

43. Except as hereinbefore specifically found, the Court finds generally each and all of the facts in issue herein in favor of the Defendant, Sanden and Ferguson Company, a Montana corporation, and against the Plaintiff, Chester Bowles, Administrator, Office of Price Administration.

CONCLUSIONS OF LAW

From the foregoing facts the Court draws the following conclusions of law:

1. This Court has jurisdiction of the subject matter of this action in equity and of the parties Plaintiff and Defendant herein;

2. The Plaintiff, Chester Bowles, Administrator, Office of Price Administration, is without right in the premises; and

3. That the preliminary and final injunction and all other relief requested by the Plaintiff herein should be denied and the action dismissed in its entirety with prejudice. [119]

Proper form of judgment will be presented for signature and filing.

Done in open court at Butte, Montana, June 29, 1944.

JAMES H. BALDWIN

United States District Judge

District of Montana

[Endorsed] Filed June 29, 1944. [120]

Thereafter, on July 6, 1944, a Judgment signed by the Court and filed on July 5, 1944, was duly entered herein, in the words and figures following, to-wit: [121]

District Court of the United States, District of Montana, Helena Division.

No. 173

CHESTER BOWLES, Administrator,
Office of Price Administration,

Plaintiff

v.

SANDEN and FFERGUSON COMPANY,
a Montana Corporation,

Defendant.

JUDGMENT

This cause came duly and regularly on for trial before the Court at Helena, Montana, the Honorable James H. Baldwin, Judge presiding, sitting

without a jury. The Plaintiff was represented by its attorneys, Clarence E. Wohl and Philip Savarsey, and the Defendant was represented by its attorneys, Paul W. Smith and David R. Smith.

Oral testimony was heard and certain exhibits were identified and admitted in evidence and at the close of the testimony the parties Plaintiff and Defendant announced that they rested and by agreement of counsel, expressed in open court, the parties litigant were granted time after the completion of the transcript of the proceedings had at the trial herein within which to prepare, serve upon the opposing party, and lodge with the Clerk of the Court memoranda of authorities in support of their contentions and proposed findings of fact and conclusions of law.

The parties litigant filed their memoranda of authorities and proposed findings of fact and conclusions of law within the time allowed, and the court being fully advised in the premises, and having filed herein its Findings of Fact and [122] Conclusions of Law, and having directed that judgment be entered in accordance therewith, Now, Therefore, by reason of the law and findings aforesaid:

It Is Hereby Ordered, Adjudged and Decreed:

1. This Court has jurisdiction of the subject matter of this action in equity and of the parties Plaintiff and Defendant herein;

2. That Plaintiff, Chester Bowles, Administrator, Office of Price Administration, is without right in the premises; and

3. That the preliminary and final injunction and all other relief requested by the Plaintiff herein is denied and the said action dismissed in its entirety with prejudice.

Done in open court at Butte, Montana, July Fifth, 1944.

JAMES H. BALDWIN

United States District Judge,
District of Montana.

[Endorsed]: Filed July 5, 1944. Entered July 6, 1944. [123]

Thereafter, on September 11, 1944, Notice of Appeal by Plaintiff was filed herein, in the words and figures following, to-wit: [124]

[Title of District Court and Cause]

NOTICE OF APPEAL

Notice is hereby given that Chester Bowles, Administrator, Office of Price Administration, plaintiff herein, hereby appeals to the Circuit Court of Appeals for the 9th Circuit from the final judgment filed herein on July 5, 1944, and entered herein on July 6, 1944.

FLEMING JAMES, JR.

DAVID LONDON

MAX D. MELVILLE

CLARENCE E. WOHL

Attorneys for Plaintiff

[Endorsed]: Filed Sept. 11, 1944. [125]

Thereafter, on September 11, 1944, docket entry showing mailing of copy Notice of Appeal to counsel for Defendant was made by the Clerk, in the words and figures following, to-wit:

Sept. 11, 1944, Mailed copy Notice of Appeal to Paul W. Smith and David R. Smith, Attys. for Deft. Helena, Montana. [126]

Thereafter, on September 11, 1944, Designation of Record was filed herein by the Plaintiff, in words and figures following, to-wit: [127]

[Title of District Court and Cause]

DESIGNATION OF RECORD ON APPEAL

The Clerk will please prepare a record in this action for the purposes of an appeal to the Circuit Court of Appeals of the 9th Circuit containing the following records, proceedings and evidence:

- (1) plaintiff's complaint, (2) defendant's answer, (3) plaintiff's motion to strike portions of defendant's answer, (4) order denying plaintiff's motion to strike portions of defendant's answer, (5) plaintiff's interrogatories under rule 33 of the Federal Rules of Civil Procedure, (6) defendant's objections to plaintiff's interrogatories under rule 33 of the Federal Rules of Civil Procedure, (7) order on defendant's objections to plaintiff's interrogatories under rule 33 of the Federal Rules of Civil Procedure, (8) plaintiff's notice to defendant

to produce records on trial of action, (9) plaintiff's motion to substitute Chester Bowles, Administrator, as party plaintiff, (10) stipulation of parties to substitute party plaintiff, (11) minute entry of November 9, 1943, ordering substitution of party plaintiff, (12) plaintiff's request for findings of fact and conclusions of law, (13) defendant's request for findings of fact and conclusions of law, (14) court's findings of fact and conclusions of law (15) judgment of the court, (16) transcript of the evidence taken upon the trial of said action and which was stenographically reported, (17) plaintiff's original exhibits, numbered 1 to 27, inclu- [128] sive, and which were introduced in evidence upon the trial of said action.

Two copies of the transcript of the evidence taken upon the trial of said action are herewith filed with the Clerk of the above entitled court.

FLEMING JAMES, JR.

DAVID LONDON

MAX D. MELVILLE

CLARENCE E. WOHL

Attorneys for Plaintiff

Received a copy of the foregoing this 11th day of September, 1944.

PAUL W. SMITH

DAVID R. SMITH

Attorneys for Defendant-
Appellee

[Endorsed]: Filed Sept. 11, 1944. [129]

Thereafter, on September 11, 1944, Statement of Points on which Appellant intends to rely on appeal was filed herein, in the words and figures following, to-wit: [130]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

The following is a concise statement of the points on which Chester Bowles, Administrator, Office of Price Administration, the Plaintiff and appellant herein, intends to rely on his appeal from the judgment in the above entitled court to the United States Circuit Court of Appeals, for the Ninth Circuit:

1. That the Court erred in entering a final judgment of dismissal herein.
2. That the court erred in entering a final judgment denying to plaintiff any of the relief prayed for in his complaint and dismissing plaintiff's action.
3. That the Court erred in failing to enter judgment in favor of plaintiff against defendant.

JAMES FLEMING, JR.

DAVID LONDON

MAX D. MELVILLE

CLARENCE E. WOHL

Attorneys for Plaintiff.

Service of foregoing and receipt of true and correct copy thereof acknowledged and admitted this 11th day of September, 1944.

PAUL W. SMITH

DAVID R. SMITH

Attorneys for Defendant

[Endorsed]: Filed Sept. 11, 1944. [131]

Thereafter, on September 11, 1944, Transcript of Evidence was filed herein by the Plaintiff, in the words and figures followin, to-wit: [132]

[Title of District Court and Cause.]

PROCEEDINGS

Be It Remembered that the above-entitled action came duly and regularly on for trial before the above-entitled Court, the Honorable James H. Baldwin, Judge presiding, sitting without a jury, at Helena, Montana on Friday, January 14, 1944, and the evidence not being concluded on that day, it was continued until ten o'clock in the morning on Saturday, January 15, 1944, on which day the evidence was completed. The Plaintiff, Chester Bowles, Administrator, Office of Price Administration, was represented by Clarence E. Wohl and Philip Savaresy, and the Defendant, Sanden and Ferguson Company, a Montana corporation, was represented by Paul W. Smith and David R. Smith. Thereupon the following proceedings were had and

taken and the following evidence, and none other, was introduced.

The Court: No. 173, Chester Bowles, Administrator, Office of Price Administration, v. Sanden and Ferguson Company, a Montana corporation. Are the parties ready?

Mr. Wohl: The Plaintiff is ready.

Mr. Paul Smith: The Defendant is ready.

The Court: Very well. I wish you would make a short statement [134] of the issues, the legal questions presented, and what you have to offer in support of it.

(Mr. Wohl made a statement as to the Plaintiff's contentions, and Mr. Paul Smith made a statement as to the Defendant's contentions.)

The Court: Call the first witness on behalf of the Plaintiff.

ROSE WILLMAN,

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Wohl:

Q. Your name is Rose Willman?

Mr. Paul Smith: May it please the Court, we object to the introduction of any evidence in this case on the ground that the Complaint does not state facts sufficient to constitute a cause of action on which relief can be granted.

The Court: Objection overruled.

A. Yes, sir.

Q. By whom are you employed?

A. By the War Price and Ration Board.

Q. Where? A. Helena, Montana.

(Testimony of Rose Willman.)

Q. And is that Board designated Board 5-1?

A. Yes.

Q. How long have you been employed there?

A. Since September 22, 1943.

Q. In what capacity are you employed?

A. Price Clerk.

Q. Would you state who has custody or charge of the cost of living statements filed with your office?

A. I have.

Q. Over what area does that Board serve? [135]

A. Lewis and Clark County.

Q. Is there any other War Price and Ration Board in Lewis and Clark County?

A. No.

Q. Mrs. Willman, can you state whether or not there is on file in your office a cost of living commodity statement filed by Sanden and Ferguson Company?

Mr. Paul Smith: We object to the question as incompetent, irrelevant, and immaterial; it has no bearing on the issues involved in this case, and that the proper foundation has not been laid for the introduction of this evidence.

The Court: Well, specifically what is the contention that the proper foundation has not been laid based on? The other questions raised may or may not be sound.

Mr. Smith: The specific objection is that the Price Administrator was not authorized by the Emergency Price Control Act to require statements as to all the commodities which the Defendant sold in its store.

(Testimony of Rose Willman.)

The Court: Very well. The objection will be overruled.

(Question read by the reporter.)

A. Yes.

Q. I hand you an instrument marked for identification as Plaintiff's Exhibit No. 1 and ask you what that is.

A. This is a copy of the cost of living commodity statement of Sanden and Ferguson.

Q. Did you compare that copy with the original on file in your office? A. Yes, I did.

Q. Is it a true and correct copy of it?

A. Yes, it is. [136]

Q. I direct your attention to the last page of Plaintiff's proposed Exhibit No. 1, and to the signature appearing thereon, Rose H. Willman, and I ask you if that is your signature?

A. Yes, it is.

Mr. Wohl: At this time we would like to offer in evidence an identified copy of the Defendant's cost of living commodity statement.

Mr. Paul Smith: We would like to object to the introduction of this exhibit in evidence on the ground that it is incompetent, irrelevant, and immaterial; that it has no bearing upon the issues in this case; that the proper foundation has not been laid for its introduction in evidence; on the grounds that this is based upon a regulation that is unconstitutional; that the Price Administrator did not have the authority to issue such a regulation or to re-

(Testimony of Rose Willman.)

quire such a statement to be filed, and that there is no provision in the Emergency Price Control Act requiring a statement of all the commodities which the Defendant sold.

The Court: I don't think the Government contends there is, but only with reference to cost of living commodities.

Mr. Smith: As to all cost of living commodities, and there is no provision of the Emergency Price Control Act which requires such a statement to be filed.

The Court: Well, it appears to me that it is highly likely we are encumbering the record, but that point is not raised; we will pass it. In other words, only certain commodities are involved in this case; possibly a complete statement of all commodities reported by them is not necessary. I suppose this document falls within the rules of allowing the production and putting in evidence of certified copies? [137]

Mr. Wohl: I assume it does; it was testified to as a compared copy.

The Court: The better practice, I think, would be to offer the original and then substitute a copy. The objection will be overruled.

(Plaintiff's Exhibit No. 1 admitted in evidence over Defendant's objection, is a cost of living commodities statement, and pursuant to agreement between counsel to be found later in this transcript, none of the exhibits will be included in this transcript.)

(Testimony of Rose Willman.)

Q. Mrs. Willman, have you made a search of the records of your office to determine whether or not Sanden and Ferguson Company has ever filed any supplement to this cost of living commodity statement?

Mr. Smith: Objected to on the same ground as we objected before the statement was admitted.

The Court: The objection will be overruled. These rulings are all pro forma.

A. Yes, I have.

Q. When did you make such an examination?

A. Yesterday.

Q. Were you able to find whether they did file any supplements to the cost of living statement?

A. I found nothing.

Mr. Wohl: You may cross-examine.

Mr. Smith: No cross-examination.

EUGENE SANDEN,

called as a witness by the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Wohl:

Q. State your name, please. [138]

A. Eugene Sanden.

Q. Are you the manager of the Sanden and Ferguson Company in Helena, Montana?

A. My father is the manager; I assist him.

(Testimony of Eugene Sanden.)

Q. You are the assistant manager?

A. Yes.

Q. Your father has taken an active part in managing the store? A. Yes.

Q. How long have you been such assistant manager?

A. I presume for about fifteen or twenty years.

Q. Do you know when the Sanden and Ferguson Company was incorporated?

A. It was incorporated in 1910.

Q. Under the laws of what state?

A. Montana.

Q. How long has Sanden and Ferguson Company been engaged in business in Helena?

Mr. Paul Smith: Objected to as incompetent, irrelevant, and immaterial.

The Court: Overruled.

A. My father began to engage in business in Helena shortly after 1885; he took part ownership in the early 1890's.

Q. Pardon me, but I don't believe your answer was responsive. How long has the corporation been engaged in business in Helena?

A. Since it was incorporated.

Q. Continuously since then?

A. Continuously since then, yes, sir.

Q. Mr. Sanden, did you participate in the preparation of the cost of living commodity statement for your store? A. Very slightly. [139]

Q. Would you tell us who did prepare the statement?

A. Well, I had been so short of help, and——

(Testimony of Eugene Sanden.)

The Court: Who did it?

A. Well, my sister did it.

Q. Who is your sister?

A. Mrs. F. H. MacPherson.

Q. Is she employed in your store?

A. No; she was employed temporarily. She came, if I may explain—she is the wife of a mining engineer. He was operating gold property in Northwest British Columbia, and when the gold mines were closed by Government order there as well as here, he came down through here on his way to take a position in Little Rock, Arkansas, and while Florence, my sister, was here, she undertook to gather this information through the store and through the help at the store and to typewrite it and get it over to your office. I had been unable to do it because I was simply swamped with work, as I am at the present time, but she prepared it.

Q. Did anyone else participate in preparing it?

A. Everyone in the store participated. That is, say the lady in the hosiery section, both of them, probably gathered what information they could, and the ladies in the notion section gathered what information they could and gave it to her, and she typewrote it down and so on through the various sections.

Q. Handing you an instrument marked Plaintiff's Exhibit No. 1, which purports to be a copy of the cost of living commodity statement of Sanden and Ferguson Company, I will ask you if you can

(Testimony of Eugene Sanden.)

identify that as being a copy of the statement prepared for you?

A. I would identify it as such, yes. [140]

Q. Do you know when that statement was filed with the War Price and Ration Board?

Mr. Paul Smith: Objected to as incompetent, irrelevant, and immaterial. He is not qualified to answer that.

The Court: Overruled.

A. Yes, I will answer that. That was in February, 1943.

Q. Mr. Sanden, we served notice on you to produce your base period statement. Do you have that with you?

A. Yes, that is in that envelope over there. That includes the cost of living commodity items. That is the statement that your investigators have used right along. I presume it is all there.

Q. Mr. Sanden, at the time that this cost of living commodity statement was prepared, a base period statement was likewise prepared, is that correct?

A. Yes, prepared at the same time; yes, sir.

Mr. Wohl: I would like to have these loose sheets identified as an exhibit.

The Court: Are they separate sheets?

Mr. Wohl: They are not bound together at all.

The Court: Well, the Court will stand in recess for a few minutes to give you an opportunity to fasten them together.

(Testimony of Eugene Sanden.)

(At this point the Court stood in recess for twenty minutes, after which the following proceedings were had:)

Q. Mr. Sanden, I hand you an instrument marked for identification as Plaintiff's Exhibit No. 2 and ask you if that is the base period statement prepared by Sanden and Ferguson Company?

A. This is a combination of the base period statement and the cost of living commodities statement you have already filed. We have a cost of living commodities such as you have filed already.

[141]

Q. What do you mean by that? Does this cost of living commodities incorporated in this base period statement represent March, 1942, prices?

A. Yes, that represents them.

Q. In other words this base period statement includes cost of living commodities and such other commodities that were not cost of living commodities?

A. We tried to include practically everything in the store; we tried, that is I gave instructions to that effect that all merchandise in the store should be listed.

Q. And this instrument marked Plaintiff's Exhibit No. 2 refers to March, 1942, prices of these commodities?

A. Yes.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 2.

Mr. Paul Smith: Objected to on the same

(Testimony of Eugene Sanden.)

ground we objected to the other statement. We also object on the ground there is no provision of the law that establishes prices as of March, 1942. It is arbitrary legislation to establish prices in 1942 because there is no provisions in the law as of March, 1942. We also object on the ground that it is contrary to the Constitution in that the regulation is unconstitutional.

The Court: Well, the objection will be overruled. As I say, this ruling is pro forma now; it will be subject to briefing and consideration later.

Q. Mr. Sanden, who prepared this base period statement, if you know?

A. Mrs. F. H. MacPherson.

Q. With the assistance of any one else?

A. With the assistance of everyone in the store.

[142]

Q. Has Mrs. MacPherson had any mercantile experience?

A. Yes.

Q. Was she an employee of Sanden and Ferguson at any time?

A. She has worked for the store at times years ago.

Q. Do you know how the March prices were determined?—

Mr. Paul Smith: Objected to on the ground there is no provision in the Emergency Price Control Act establishing prices in March, 1942; it is incompetent, irrelevant, and immaterial.

Mr. Wohl: —May I finish my question?

The Court: Finish your question, then the objection will be considered as made.

(Testimony of Eugene Sanden.)

Q. —that appear in the base period statement?

A. We went to the merchandise to gather the prices; just simply took the prices from the merchandise itself that was on hand at that time.

The Court: On hand at what time?

A. It was on hand at the time that this statement was prepared.

The Court: When was that?

A. In January and February, 1943.

Q. Were the same prices in effect in March, 1942, as in January and February, 1943?

Mr. Paul Smith: Objected to; there is no provision in the Emergency Price Control Act requiring the prices as of March, 1942; it is incompetent, irrelevant, and immaterial. We want this objection to go to all of these questions as to merchandise of March, 1942, and prices of commodities.

The Court: I take it the record may so show. My understanding is that the Administrator was left some discretion in these matters and he fixed this period in March, 1942. Well, it is [143] a matter for argument and later consideration; we can't consider these constitutional questions during the trial of the case. They will all be considered carefully and determined after being briefed by the parties here when the time comes, but now we will overrule the objection pro forma.

(Question read by the reporter.)

A. Yes.

(Testimony of Eugene Sanden.)

Q. That is for all commodities that appear in the base period statement? A. Yes.

Q. Did you handle the same makes, kinds, and qualities of commodities at the time you made the base period statement as in March, 1942?

A. We handled all of them, and we also perhaps handled a few others. There may have been a few additional ones handled in 1943 in addition to those handled in 1942.

Q. How many years of merchandising experience have you had, Mr. Sanden?

A. I began to work for my father when I was a small boy. But then, of course, there have been intermissions; there have been times when I have been away in school, times when I was in the army in the last war.

Q. Approximately how many years?

A. Well, let's see—probably thirty years.

Q. Who does the buying of commodities for Sanden and Ferguson Company?

A. We all work together on that in the ladies' ready-to-wear section. In the millinery Mrs. LeJeune does the buying; in the hosiery, Mrs. Southerland; same lady does the buying for [144] the ladies' foundation garments, ladies' underwear. In the men's section I do the buying generally. In the dry goods section Mrs. Clark does the buying for the most part, although we work together on that.

Q. Mr. Sanden, state whether it is not a fact

(Testimony of Eugene Sanden.)

that different qualities of merchandise have different lot numbers or different style numbers?

A. That is true.

Q. Is that the general rule?

A. Well, all merchandise is billed to us by different lot numbers.

Q. Would two different qualities of a particular commodity have the same lot number?

A. Would two different qualities of the same commodity?

Q. Yes, have the same lot number.

A. Well, if they are different qualities they would have different lot numbers.

Mr. Wohl: If the Court please, we would ask permission to substitute a copy of Exhibit No. 2 so that the original may be taken back by Mr. Sanden.

The Court: Any objection to that?

Mr. Smith: No, Your Honor.

The Court: Let the record show you may. Submit the copy to the Clerk for marking.

Mr. Wohl: May Exhibits No. 1 and No. 2 be considered as read into the record?

The Court: Well, Exhibit No. 1 appears to be a certified copy of a record in the hands of the OPA here. Exhibit No. 2 appears on the testimony of this witness to be a base period [145] statement and cost of living commodity prepared by the Defendant and produced by the witness on the stand as I gather it. Now as to Exhibit No. 2, submit the copy to the Clerk so that he may mark

(Testimony of Eugene Sanden.)

it as Exhibit No. 2, and if it is agreed that the paper so marked is a copy of Exhibit No. 2, the Court authorizes the withdrawal of the original and the substitution of the copy. Is that agreeable?

Mr. Paul Smith: Well, we won't agree it is a copy until we find out who copied it.

The Court: Well, we will cover the situation in this way. The Clerk will compare the papers stated by the attorney for the plaintiff to be a copy of Exhibit No. 2 with the original exhibit, and if found by him to be a true copy, the same will be substituted on the record for the original and the original will be returned by the Clerk to Mr. Sanden.

Mr. Paul Smith: That is all right.

Q. Mr. Sanden, I refer you to this cost of living commodity statement, Plaintiff's Exhibit No. 1, and I direct your attention to certain items appearing on page 3 thereof. It says, "turkish," next column, "CPS", next column, "colored", ".35". Under that appear six ditto marks; under "CPS" appear likewise six ditto marks; under the word "colored" appear likewise six ditto marks, and in the last column for the first item appears the price 35c, immediately under that, 45c, under that 59c, under that 89c, under that \$1, under that \$1.39, and under that \$1.50. I will first ask you what the word "turkish" refers to.

A. Turkish refers to towels, huck towels, and under it the word "turkish." "CPS" probably

(Testimony of Eugene Sanden.)

means Carson-Pirie-Scott, the source. It was undoubtedly impossible to give any lot number [146] on that lot number because they may have been on the shelf without any lot number on them. Our cost on them was cost and selling price and naturally, as you know, there are all kinds of turkish towels. You can get so many different sizes; you can get a very small size on up to a beach size three yards long and two yards wide, extra heavy. Those were identified to the best of my ability at the time.

Q. Do you know whether any effort was made to secure the lot number?

A. Effort was made right along to secure lot numbers. I know at times when it was impossible to find any further information I told those inquiring about it just skip it and put down the best they could.

Q. Now I refer you to the same exhibit on page 4, two items appearing thereon as pique.

A. That is right.

Q. —with no lot number or other description other than the fact “Pique”, manufacturer designated as “Robinson”, description “White”, and the price of one is 35c and the other 50c.

A. Different quality pique.

Q. Those would have been different qualities and they would have different lot numbers?

A. They would have different lot numbers.

Q. Referring to the same page of the exhibit

(Testimony of Eugene Sanden.)

with reference to cotton damask, of which there appears three items of cotton damask with the only description thereof "CPS" as manufacturer, description "White", one price 95c, one price 75c, and one price 89c.

A. That is correct.

Q. I will ask you whether or not there are three different [147] qualities in that?

A. Those are three different qualities, yes, sir.

Q. Referring to page 8 of Exhibit No. 1, with reference to the item muslin; three different items appear thereon and the only description "Butlers" is the manufacturer, description "36"?"

A. Yes, sir.

Q. The prices designated 22c and 19c. That would be two items?

A. Two different qualities.

Q. They would be two different lot numbers?

A. They wouldn't have the lot number on them probably; they might have had, and they might not have had, but they came in billed to us as two different numbers, yes, sir.

The Court: What does the lot number indicate?

A. The lot number is a number placed upon an article by the shipper. Might be the manufacturer, jobber, mill agent; just simply an arbitrary number in order to designate the article for their own record.

The Court: And for your record in dealing with that particular shipment?

(Testimony of Eugene Sanden.)

A. In checking the item in from the manufacturer or mill agent, yes, sir.

Q. Directing your attention to page 10 of Exhibit No. 1, with reference to dish towels, the description being "Dish Towels", "Kitchen Towel Co" manufacturer, "Colored", 25c; immediately under that is the second description with the price 19c.

A. Yes, sir; two different qualities.

Q. That would be two different lot numbers?

A. Yes, sir. [148]

Q. Referring to page 17—

A. —that might not be a lot number at all; in the case of kitchen towels they might just simply send one group, 500 or 1,000 pounds of this particular lot at a certain price, billing us as one lot of towels at a certain price.

Q. Directing your attention to page 17 of Exhibit No. 1 to the article "Mens Mackinaws", the description being "Mens Mackinaws", "Shankhouse" manufacturer, "Plaid"—

A. That is the design.

Q. —one price being \$8.95; same description underneath with the price \$17.95; third price \$15.95, same description; fourth price \$12.50, same description; next price \$9.50 of the same description. I will ask you whether or not those mackinaws are different qualities? A. Yes.

Q. They would have, likewise, different lot numbers?

(Testimony of Eugene Sanden.)

A. They would have different lot numbers, yes, sir.

Q. Now, Mr. Sanden, do you have the original of the warning notice?

A. Yes, I have; it is over there on the table.

Q. Mr. Sanden, I show you an instrument marked for identification as Plaintiff's Exhibit No. 3, and ask you what that is?

A. This is a letter from the Regional administrator, Clem W. Collins, notifying us of a failure to comply with the general maximum price regulation.

Q. Do you recall when you received that letter?

A. We received it, I think, shortly after the date here, January 14, 1943. I presume it would be two or three days after that; probably January 16th.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 3. [149]

PLAINTIFF'S EXHIBIT NO. 3

[Attached to letter]:

Inquiries with respect to this notice may be made by writing to Office of Price Administration, Hotel Placer Building, Helena, Montana, attention Mr. Wesley W. Wertz, State Enforcement Attorney.

Office of Price Administration

Region VII

Denver, Colorado

Warning Notice

(Testimony of Eugene Sanden.)

To: Sanden & Ferguson Company
111 North Main Street
Helena, Montana

By the provisions of Section 16 of the General Maximum Price Regulation you were granted a license as a condition of selling, at wholesale or retail, any commodity or commodities with respect to which such licensing provisions are applicable.

In the judgment of the undersigned, Regional Administrator of Region VII of the Office of Price Administration:

1. You failed to prepare on or before July 1, 1942 and keep for examination a statement showing the highest prices charged by you for those commodities for which maximum prices are established by the General Maximum Price Regulation and which you delivered during the month of March, 1942, and showing the prices at which you offered to deliver such commodities during that month, together with an appropriate description or identification of each such commodity, thereby violating Section 11 (b) of the General Maximum Price Regulation and the provisions of the license granted you under Section 16 of the General Maximum Price Regulation.

2. You failed to file on or before July 1, 1942, with your War Price and Rationing Board a statement showing your maximum price for each cost-of-living commodity offered for sale by you at retail, thereby violating Section 13 (b) of the Gen-

(Testimony of Eugene Sanden.)

eral Maximum Price Regulation and the provisions of the license granted you under Section 16 of the General Maximum Price Regulation.

3. You failed on or about December 28, 1942, to have posted or marked in your premises in a manner plainly visible to and understandable by the purchasing public, the maximum price of each cost-of-living commodity offered for sale by you at retail, thereby violating Section 13 (a) of the General Maximum Price Regulation and the provisions of the license granted you under Section 16 of the General Maximum Price Regulation.

Notice is further given if, after receipt of this warning notice, you violate any provisions of your license, or any provisions of any regulations, incidental order, or requirement with respect to which your license is applicable, proceedings may be instituted in a court of competent jurisdiction for an order suspending your license to sell at wholesale or retail any commodities to which your license is applicable.

This warning notice is sent to you pursuant to the provisions of Section 205 (f) (2) of the Emergency Price Control Act of 1942 and under the authority conferred upon the Regional Administrator by General Order No. 27 (7 F. R. 5480, 8797, 9053, and 9908).

January 14, 1943.

CLEM W. COLLINS,

Regional Administrator.

[Endorsed]: Filed Jan. 15, 1944.

(Testimony of Eugene Sanden.)

Mr. Paul Smith: Objected to on the ground it is incompetent, irrelevant, and immaterial; has no bearing on the issues involved in this case.

The Court: Objection overruled. As I recall it the receipt of that warning notice, so-called, is admitted in the pleadings, isn't it? The same will be admitted in evidence and the objection is overruled pro forma.

Q. Mr. Sanden, after you received this warning notice and during the month of January, did you and your sister Florence MacPherson call upon the Price Division of the OPA?

A. Yes, we did.

Q. Did you obtain certain information with regard to preparing base period statements and cost of living commodities? A. We did.

Q. Do you recall who you saw at that time?

A. Well, I had gone previously, I believe, to see Mr. Wertz, and then later we went to see Mr. Anderson and this gentleman back here; I can't tell you his name.

Q. Mr. McDermott?

A. That's right; they were in the office together when we went in.

Q. You did have a conversation with them at that time? A. Yes, we did.

Q. They advised you as to what was necessary to be done in the preparation of the base period statement?

A. Yes, they did the best they could to inform us what to do.

(Testimony of Eugene Sanden.)

Q. They also advised you as to how the prices should be posted of cost of living commodities?

A. Well, I don't think that was taken up. I think what we wanted to find out was how to go about the preparation of this [150] cost of living commodity and basic price list because that was why my sister was along with me; she was going to do the work and we wanted the information and I think that was all discussed at the time; I don't recall anything else discussed.

Q. Did you receive a pamphlet or book at that time from either Mr. Anderson or Mr. McDermott on how to prepare your base period statement and cost of living commodity statement?

A. Yes, they gave us one of these booklets.

Q. Mr. Sanden, I hand you a pamphlet marked for identification as Plaintiff's Exhibit No. 4 and ask you if that is a copy of the pamphlet you received?

A. Yes, this is a copy of it.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 4 for identification.

Mr. Paul Smith: Objected to on the ground that it is incompetent, irrelevant, and immaterial; has no bearing upon the issues involved in this case; that it does not conform to the Emergency Price Control Act of 1942 in that this regulation exceeds the authority granted by the Emergency Price Control Act of 1942 to the Price Administrator. We object to it on the ground it is unconstitutional, contrary to the provisions of Article I, Paragraph I of the Constitution of the United States in that

(Testimony of Eugene Sanden.)

it is a usurpation upon the power of Congress and is illegal legislation. Said regulation is contrary to the provisions of Amendment Five of the Constitution of the United States—deprived of liberty without due process of law.

The Court: The objection will be overruled and Exhibit No. 4 admitted in evidence.

Mr. Wohl: That is all.

Mr. Smith: No cross-examination. [151]

DORA C. CLARK,

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Wohl:

Q. By whom are you employed, Miss Clark?

A. The Office of Price Administration.

Q. In what capacity? A. As Investigator.

Q. How long have you been so employed?

A. Since February 1, 1943.

Q. Will you state generally just what your duties as an investigator are?

A. My duties are to investigate compliance of the regulations of the Office of Price Administration.

Q. During the month of March, 1943, did you conduct such an investigation in Sanden and Ferguson Company in Helena, Montana?

A. I assisted in conducting that investigation.

Q. Who did you assist?

(Testimony of Dora C. Clark.)

A. Donald I. Creel.

Q. Who is Mr. Creel?

A. He is also an investigator for the Office of Price Administration.

Q. During the investigation and in the course of your investigation did you examine the March, 1942, sales slips issued by the Sanden and Ferguson Company?

Mr. Paul Smith: Objected to on the ground it is incompetent, irrelevant, and immaterial; has no bearing on the issues involved in this case; no provision in the Emergency Price Control Act establishing March, 1942, as a period upon which maximum prices could be established.

The Court: As I understand it, he is dealing with 1943. [152]

Mr. Wohl: I asked her if she had made an investigation of the March, 1942, sales slips; that is the base period on which they were to calculate.

The Court: How does she know they were the 1942 sales slips?

Q. During the course of your investigation that you made in March, 1943, did you examine certain sales slips issued by Sanden and Ferguson Company?

Mr. Paul Smith: Objected to; the witness is not qualified to testify.

The Court: We will let her tell us what she did.

A. Yes, I did.

The Court: The objection to that question was sustained. Just let her tell us what she did. I want to know what you did, how, and why.

(Testimony of Dora C. Clark.)

A. Mr. Creel and I entered Sanden and Ferguson Company's store on March 23, 1943, and asked for the person in charge. We were directed by the bookkeeper to Mr. Eugene Sanden, and we asked Mr. Sanden if we could examine all of his March, 1942, sales slips and he directed us to Inga M. Elertson, the bookkeeper, and she secured these March, 1942, cash and credit sales slips for us.

Q. Did you examine any other sales slips at that time for any other month?

A. We examined sales slips for April, 1942, and also for February, 1943.

Q. Did you examine any purchase invoices?

A. Yes, we did.

Q. Covering what period?

A. From September 1, 1941, through up to the date that we were in the store in March, 1943. [153]

Q. Now would you relate just how you conducted the examination of the March, 1942 sales slips?

A. Each day's slips were tied in separate bundles; the cash slips were tied separate from the credit slips. And we decided to take out the sales slips for certain items and I thumbed through these slips for these items we were taking the slips for and handed them to Mr. Creel who read them over and tabulated all the information from the slips on to a chart.

Q. During the course of your investigation did you make an inspection of the store of Sanden and Ferguson Company to determine whether the maximum prices of cost of living commodities had been marked or posted in the store?

A. Yes, I did.

(Testimony of Dora C. Clark.)

Q. What was the result of that inspection?

Mr. Paul Smith: Objected to on the ground it is incompetent, irrelevant, and immaterial; has no bearing upon the issues in this case.

The Court: The Court merely suggested she tell us what she did.

A. Mr. Creel and I inspected the store and found——

The Court: I want to know just what you did; I will draw the conclusions. Just tell me what you did.

A. There was no ceiling price or maximum price posted.

Mr. Paul Smith: Objected to as a conclusion and not responsive to the question.

The Court: Yes. What did you do in making your inspection of the premises and what did you find or fail to find? Just what did you do? Did you stand at the corner of the desk, or did you go from table to table?

A. Walked from table to table. [154]

Q. And tell us what you did?

The Court: What did you do at these tables?

A. I looked for the ceiling price or maximum price on the articles that were being sold or offered for sale at Sanden and Ferguson Company's store, and I was unable to find any ceiling or maximum price for such items of yard goods as jersey, shark-skin, Indian head and ticking; for all bedspreads; Wamsutta, Glengarry, and Sonoma brand of bed

(Testimony of Dora C. Clark.)

sheets; for women's and girl's dresses; women's skirts; men's overalls; and also for children's hosiery and children's gloves, and for the majority of the men's work pants.

Q. Did you go entirely through the store to determine whether or not those prices were posted any place in the store? A. Yes, we did.

Q. During the course of this investigation did you go through the store to see if selling prices were posted for certain items? A. Yes.

Q. And in connection with that inspection did you inquire of any of the clerks in the store as to the selling price of commodities?

A. Yes, I did.

Q. And I will ask you whether or not you inquired as to the selling price of gingham, a yard goods?

A. I asked Mrs. Lydia Clark, a clerk in the yard goods department, the selling price of gingham and she advised me they were selling it for 39c a yard.

Q. Did you inquire as to the selling price of denim?

A. I did. I asked Mrs. Clark about the selling price for denim and she advised me—— [155]

Mr. Paul Smith: We object to this line of testimony on the ground it is not properly identified as to grades and qualities, and widths and lengths and classes.

The Court: Complete the answer. The objection will be overruled.

A. She advised me they were selling two items

(Testimony of Dora C. Clark.)

of denim, one colored denim at 45c a yard, and the other, blue overall denim, at 35c a yard.

Q. Did you inquire as to the selling price of challis, a yard goods?

A. Mrs. Clark advised me they were selling challis at 32c a yard.

Q. Did you inquire as to the selling price of jersey, a yard goods?

A. Mrs. Clark advised me they were selling rayon jersey in plain colors at \$1.65 a yard, and in prints or pattern at \$1.69 a yard.

Q. Did you inquire as to the selling price of Indian Head, a yard goods?

A. Mrs. Clark advised me they were selling three brands of Indian Head listed on their cost of living commodity statement, and these were colored Indian Head, 50c a yard; 44 inch width Indian Head at 49c a yard; and 54 inch width Indian head at 59c a yard.

Q. Did you inquire as to the selling price of burlap, a yard goods?

A. Yes, Mrs. Clark advised me they had burlap on sale at 45c a yard.

Q. During your inspection of the store did you find any posted selling price for spun rayon, a yard goods? [156]

A. Yes, I observed that the bolts of spun rayon were displayed on tables, and on this table with the bolts of spun rayon was a tee standard upon which was a card with the following writing: "Spun rayon, ceiling price, 79c." Further inspection of

(Testimony of Dora C. Clark.)

the bolts of spun rayon revealed the price 89c was written on the ends of the bolts.

Q. Did you inquire at that time as to the selling price of ticking, a yard goods?

A. Yes, Mrs. Clark advised me they had four grades of ticking, one at 49c a yard; one at 65c a yard; and two at 69c a yard.

Q. In your inspection of the store did you see whether or not there were any posted selling prices for percale, a yard goods?

A. The bolts of percale were also displayed on a table. On this table was a tee standard that had 35c and a line marked through 35c and below it 33c.

Q. At the time you made this inspection did you learn whether or not canvas was being sold in the store?

A. Yes, Mrs. Clark advised me they were selling canvas, cotton canvas, at 35c a yard.

The Court: Was that one of the articles involved in the pleadings here?

Mr. Wohl: We haven't listed it specifically.

The Court: I don't recall any canvas mentioned.

Mr. Wohl: We had the general allegation the cost of living commodity was not complete; just for the purpose of showing they were selling canvas and they had not listed it in their cost of living statement.

The Court: Very well; received on that theory.

Mr. Wohl: That is all.

Mr. Smith: No cross-examination. [157]

DONALD I. CREEL,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Wohl:

Q. Your name is Donald I. Creel?

A. Yes.

Q. By whom are you employed?

A. By the Office of Price Administration.

Q. How long have you been employed by the Office of Price Administration?

A. Since October 7, 1942.

Q. In what capacity?

A. As an investigator.

Q. During the month of March, 1943, did you assist in making an investigation of Sanden and Ferguson Company, Helena, Montana?

A. Yes, I did.

Q. Who did you assist in that?

A. Dora Clark.

Q. Are you acquainted with Eugene Sanden?

A. Yes.

Q. Did you inquire of Eugene Sanden at any time for the right to examine certain sales slips issued by Sanden and Ferguson Company?

A. Yes, I did.

Q. Would you just relate when that occurred?

A. That was on March 23, 1943.

Q. What took place?

A. I asked Mr. Sanden if we could examine his March, 1942 sales slips and he said we could.

(Testimony of Donald I. Creel.)

Mr. Paul Smith: We would like to interpose the same objection [158] to this testimony.

The Court: Very well; the same ruling under the same conditions. Proceed.

A. —Mr. Sanden said we could examine the sales slips and referred us to his bookkeeper who got the sales slips for us.

Q. And the sales slips you requested were for what month?

A. We requested the sales slips for March, 1942, for April, 1942, and February, 1943.

Q. Did you make a like request for any purchase invoices?

A. Yes, we made a request for the purchase invoices from September 1, 1941 up to that date, the latter part of March, 1943.

Q. Did you participate in making the examination of the March 1942, sales slips?

A. Yes, I did.

Q. Would you just relate how that examination was made?

A. Miss Clark sorted through the sales slips and took out the ones that we wanted and she handed those to me and I tabulated that information.

The Court: How did you determine which ones were the sales slips you wanted?

A. We just picked out the articles as they appeared on the sales slip; we didn't take them all. We took articles that we thought were easily identified.

(Testimony of Donald I. Creel.)

The Court: As I recall your answer,—“we picked out the sales slips we wanted.” What I want to know is why you wanted these particular sales slips?

A. We didn't want any particular sales slip; we chose only part of the items that were listed on the sales slips.

Q. State whether or not you had decided to examine the sales [159] slips as to the prices of certain commodities? A. Yes, that is true.

Q. We have made demand upon the Defendant to produce the March, 1942, sales slips. I will ask counsel if these are all the March, 1942, sales slips? Mr. Creel, do you know about how many March, 1942, sales slips you examined?

A. I didn't count the sales slips; I would judge there was approximately 1500.

Q. And did you make true and correct notes of each sales slip at that time?

A. Yes, I did.

Q. Would you be able to tell us without your notes as to the result of your examination?

A. No, I would not.

Q. You have your notes with you? A. Yes, sir.

Q. You made those notes? Do you have those notes here? A. Yes, I have those notes.

Q. When did you make those notes?

A. I made them during the investigation.

Q. Right at that time?

A. Right at that time.

(Testimony of Donald I. Creel.)

Q. Are they in the same condition they were at the time you made them? A. Yes, sir.

Q. I will ask you whether or not the examination of the sales slips showed the sales in March, 1942, of gingham, a yard goods.

Mr. Paul Smith: Objected to as leading. [160]

The Court: It is leading, but it is merely a base on which he expects to proceed. Overruled.

A. Yes.

Q. Do you remember what the highest price was at which gingham sold for during the month of March, 1942, as evidenced by the examination of the 1942 sales slips?

Mr. Paul Smith: Objected to as incompetent, irrelevant, and immaterial. Also that the witness is not qualified to answer. Also objected to on the ground that the items are not identified; it is not the best evidence.

Mr. Wohl: If the Court please, I believe the law is that where you have examined a great many records and you only wish to introduce the result of the examination that the witness can testify as to the result. Now the witness has testified, I believe, that there are some 1500 March sales slips, and my question was whether or not the examination disclosed the sale of gingham during the month of March, 1942.

Mr. Paul Smith: We also object on the ground it is calling for the conclusion of the witness; it is not the best evidence. It is his opinion, if the Court please.

(Testimony of Donald I. Creel.)

The Court: Well, he is dealing now with generalities,—did the sales slips indicate sales of gingham during the specified month. In a way it is an opinion; it is his conclusion. It is like examination of books by a bank cashier; he can tell us generally what he found and if one wishes to deal with particular items or figures, they may develop that phase of the question on cross-examination. That is the purpose of cross-examination; it is to clear what is left uncertain on direct examination. The objection will be overruled.

(Question read by the reporter.) [161]

A. I would have to refer to my notes.

Q. Would you refer to your notes?

A. The highest price for gingham during the month of March, 1942, as shown by an examination of the sales slips was 35c.

Q. Per what? A. Per yard.

The Court: Does it show the quality or width of the article?

A. No.

The Court: Does it show the color?

A. No.

Q. Mr. Creel, I omitted to ask you whether or not the sales slips—whether the commodity sold appearing in writing on the sales slips so that it could be identified by the sales slips?

A. By name, yes—

Mr. Paul Smith: We object to this line of testimony. Also the witness hasn't qualified himself

(Testimony of Donald I. Creel.)

to testify as to the different classes and grades and is not the best evidence.

Mr. Wohl: We are not trying to distinguish——

The Court: It is clearly not the best evidence. He examined the slips: you asked him for his opinion; whether certain things could be ascertained from it. That is really the function of the Judge. He said he examined the exhibit and he determined what was on it. So the objection that it is not the best evidence appears to me to be sound. You have the sales slips here in Court. It is now time for the noon recess and we will stand in recess until two o'clock this afternoon. During the noon recess you may examine the sales slips and pick out the ones he wants and do away with the objection on the ground it is not the best evidence. The Court will stand in recess until two [162] o'clock this afternoon.

(At this point the Court stood in recess for the noon hour and reconvened at two o'clock in the afternoon on the same day at which time the following proceedings were held:)

Q. (By Mr. Wohl. Mr. Creel still on the stand): Mr. Creel, in your examination of the March, 1942, sales slips how many sales slips did you find evidencing sales of gingham, a yard goods?

A. May I refer to my notes for that?

Q. Yes. A. Six.

Mr. Wohl: If the Court please, we have some sixty sales slips evidencing sales of these various

(Testimony of Donald I. Creel.)

yard goods. I wonder if we could group them together according to commodity for convenience?

The Court: I think so; I can see no objection to it. You will have to identify them as the sales slips taken from the Defendant.

Mr. Paul Smith: Would that necessarily mean we would have to object to the whole group? We want to reserve the right to object to any individual slip introduced.

The Court: You, of course, would have that right, but they can be marked as one exhibit, then the examination can be directed to the specific sales slip.

Mr. Paul Smith: If the Court please, could we have the understanding also that it will not be necessary to copy all of these exhibits into the record?

The Court: Well, that may be understood; the record would run entirely too large if they had to be copied.

Mr. Paul Smith: If it is agreeable to counsel for the Plaintiff?

Mr. Wohl: That's agreeable with the Plaintiff.

The Court: Let the record show that by agreement of the parties [163] expressed in open court it was ordered that in the preparation of the transcript of the proceedings of the trial it will not be necessary to incorporate therein the exhibits introduced in evidence, or any of them, or offered in evidence, or any of them.

(Testimony of Donald I. Creel.)

Q. Mr. Creel, I hand you an exhibit marked Plaintiff's Exhibit No. 5 for identification, consisting of six papers grouped together into one exhibit, and ask you what those are?

A. Those are the sales slips for March, 1942, representing the sale of gingham.

Q. I direct your attention to the fourth slip and the sixth sales slips upon which appear the word "gin". Did you inquire of anyone in Sanden and Ferguson Company what the word "gin" meant?

A. Yes, I inquired of Mrs. Clark.

Q. What did she say?

A. She said it referred to gingham.

Q. Who is Mrs. Clark?

A. Clerk in the yard goods department.

Mr. Wohl: At this time we offer in evidence Plaintiff's Exhibit No. 5.

Mr. David Smith: To which, if the Court please, we object to the introduction of the whole group or any one of said group on the ground that these slips have not been properly identified as to the specific goods or the articles themselves, classes, widths, lengths, colors, and grade thereof; have not been identified as to the exact article purchased, the purchaser, or the agent of the seller, and are incompetent, irrelevant, and immaterial.

The Court: Well, they haven't been identified as having come from the sales slips produced by the Defendant on request of the Plaintiff. [164]

Mr. Wohl: You will admit these are the sales slips you brought here in answer to our notice to produce?

(Testimony of Donald I. Creel.)

Mr. David Smith: Yes, that was not what I objected to. Those slips were pulled out of that box; we will admit these were part of the slips that were contained in the slips that were brought up by Mr. Sanden.

Mr. Wohl: You will admit these are the March, 1942, sales slips of Sanden and Ferguson Company?

Mr. David Smith: Yes, I will admit that.

The Court: The objection will be overruled.

Q. Mr. Creel, did you make an examination of the cost of living statement filed by Sanden and Ferguson Company with the War Price and Ration Board at Helena, Montana?

A. Yes, I did.

Q. Would you be able to determine whether or not gingham, a yard goods, was listed in the cost of living commodity statement? A. Yes.

Q. Do you know whether the gingham is listed in the cost of living commodity statement?

A. Yes.

Q. Handing you Plaintiff's Exhibit No. 1, I will ask you if you will turn to the part in the cost of living commodity statement where gingham, a yard goods, is listed?

A. It is on this page.

Q. You are referring to page 4 of the Exhibit No. 1? A. Yes.

Q. And are you pointing to the item marked gingham under the word "article", and "Golden Rod" under the word "Style No.", and "Carsons" under the word "Manuf.", with the maximum price [165] of 39c? A. Yes.

(Testimony of Donald I. Creel.)

Q. State whether or not you were able to find any other gingham as yard goods listed in the cost of living commodity statement.

Mr. Paul Smith: Objected to on the ground it is incompetent, irrelevant, and immaterial. Also that the witness has not qualified himself to testify as to these articles or what this merchandise consists of or what it pertains to. He has not qualified himself as to the knowledge necessary to testify as to the contents of the statement. Also with reference to these particular sales slips, or any other sales slips, the slips have not been identified at all with the price list; also as to quality, class, size, color, and so forth.

The Court: I take it you can read. Can you read?

A. Yes, sir.

The Court: Overruled.

(Question read by the reporter.)

A. No.

Q. Mr. Creel, handing you Plaintiff's Exhibit No. 6 for identification, an exhibit consisting of three slips of paper, and I ask you what that is?

A. Those are the sales slips representing sales of gingham during the month of February, 1943.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 6.

Mr. David Smith: If the Court please, we offer the same objection to these slips as were made as to the other slips just received and introduced as

(Testimony of Donald I. Creel.)

a group. Also that these particular slips have not been identified as to date.

The Court: Do they bear date upon their face?

[166]

Mr. Wohl: They do.

Mr. David Smith: The date, if Your Honor please, is written differently, with a different pencil.

Mr. Wohl: We made a demand upon you to produce these records and these are the records you furnished in response to the demand. Do you admit these are your February, 1943, sales slips issued by Sanden and Ferguson Company? Is that correct?

Mr. David Smith: Yes.

The Court: Let the record show it is so admitted.

Q. Mr. Creel, in your investigation or examination of the March, 1942 sales slips did you find any sales of denim, a yard goods? A. Yes.

Q. Do you know how many sales slips for denim you found?

A. During March, 1942, there were two sales of denim.

Q. I hand you Plaintiff's Exhibit No. 7 for identification, an exhibit consisting of two slips and ask you what those are?

A. Those are the sales slips that represent the sales during March of denim.

Q. Are those the only sales slips you were able

(Testimony of Donald I. Creel.)

to find in your examination of the 1942 sales slips?

A. Yes.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 7.

Mr. David Smith: Objected to on the same grounds as the other sales slips; not properly identified as to class, color, material, and parties involved. There is no definite connection between the articles set forth in the sales slips and those in the list.

The Court: Overruled.

Q. Mr. Creel, did you make an examination of the February, 1943, sales slips to determine whether any sales of denim were made [167] during that month?

A. Yes, I did.

Q. I hand you Plaintiff's Exhibit No. 8 for identification, an exhibit consisting of six slips and ask you what that is?

A. Those are the slips that cover the sales of denim during the month of February, 1943.

Mr. Wohl: At this time we offer in evidence Plaintiff's Exhibit No. 8.

Mr. David Smith: Same objection.

The Court: Overruled.

Q. Mr. Creel, did you make a search of the cost of living commodity statement filed by the Defendant to determine whether it had listed denim on that statement?

A. Yes, I did.

Q. Can you point out on the statement where denim is listed?

A. Denim is listed on page 9.

(Testimony of Donald I. Creel.)

Q. On page 9 you have indicated two items of denim, one No. 5028, manufacturer, "Schenck", a colored denim, maximum price 45c; and an overall denim, manufacturer "Butler", the color blue, maximum price 35c? A. Yes.

Q. Are those the only two denims you were able to locate in the cost of living commodity statement? A. Yes.

Q. Did you examine the March, 1942 sales slips to determine whether challis, a yard goods, had been sold during that month?

A. Yes, I did.

Q. Can you tell how many sales of Challis had been made during the month of March, 1942?

A. There was one sale made. [168]

Q. I hand you Plaintiff's Exhibit No. 9 for identification and ask you what that is?

A. That is the sales slip for the sale of challis made during March, 1942.

Q. Did you find any other sales slip evidencing the sale of challis in March, 1942?

A. No.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 9.

Mr. David Smith: Objected to on the same ground.

The Court: Overruled.

Q. Did you examine the Defendant's cost of living commodity statement filed with the local board to determine whether challis was listed therein? A. Yes, I did.

(Testimony of Donald I. Creel.)

Q. Can you point out in the statement where challis is listed?

A. That is also listed on page 9.

Q. Now you have designated a word "Chali", "Style-Lot", "5904", manufacturer, "CPS", and ditto marks under the word "Figured", with the maximum price 32c? A. Yes.

Q. Were you able to find any other challis listed in the cost of living commodity statement?

A. No.

Q. In your examination of the March, 1942, sales slips were you able to find any sales of spun rayon, a yard goods? A. Yes, I did.

Q. How many did you find?

A. During March, 1942, there were two sales.

Q. I hand you Plaintiff's Exhibit No. 10 for identification, an exhibit consisting of two sales slips, and ask you what the [169] exhibit is?

A. Those are the two sales slips representing the sales of spun rayon during March, 1942.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 10.

Mr. David Smith: Same objection.

The Court: Overruled.

Q. Did you make a search of the cost of living commodity statement filed by the Defendant to determine whether spun rayon had been listed therein? A. Yes, I did.

Q. Were you able to find the listing therein?

A. No, I was not.

(Testimony of Donald I. Creel.)

Q. In your examination of the February, 1943, sales slips were you able to find any sales of spun rayon?

A. Yes; I found two sales.

Q. I hand you Plaintiff's Exhibit No. 11 for identification, an exhibit consisting of two slips, and ask you what the exhibit is?

A. Those are the two sales slips representing the sales of spun rayon during February, 1943.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 11.

Mr. Paul Smith: Objected to on the same ground.

The Court: Overruled.

Q. In your examination of the March, 1942, sales slips, were you able to find any sales of eyelet, a yard goods, during the month of March, 1942?

A. Yes; I found one sale in March, 1942.

Q. I hand you Plaintiff's Exhibit No. 12 for identification and ask you what that is?

A. That is the slip covering that sale in March, 1942. [170]

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 12.

Mr. Paul Smith: Same objection.

The Court: Overruled. In evidence.

Q. Did you make a search of the Defendant's cost of living commodity statement to determine whether eyelet had been listed therein?

A. Yes.

Q. Were you able to find it listed therein?

(Testimony of Donald I. Creel.)

A. I believe it was; it is listed on page 3.

Q. Now you are referring to an article marked "Eyelette", manufacturer, "Robinsons", description, "White", having a maximum price of \$1?

A. Yes.

Q. Were you able to find any other eyelet listed in the cost of living commodity statement?

A. No, I was not.

Q. In your examination of the March, 1942, sales slips, did you find any sales of gabardine, a yard goods?

A. Yes; there were four sales in March, 1942.

Q. I hand you Plaintiff's Exhibit No. 13 for identification, consisting of four sales slips, and ask you what that is?

A. Those are the sales slips representing the sales of gabardine in March, 1942.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 13.

Mr. Paul Smith: Same objection.

The Court: Overruled. In evidence.

Q. In your examination of the February, 1943, sales slips did you find any sales of gabardine above the price of 85c per yard?

A. Yes, I did.

Q. How many such sales did you find? [171]

A. There were seven at \$1; one at \$1.39; and there was one sale at 89c. I beg your pardon, that was two sales at 89c.

Q. I hand you Plaintiff's Exhibit No. 14 for

(Testimony of Donald I. Creel.)

identification, consisting of ten sales slips, and ask you what those are—what the exhibit is?

A. Those are some of the sales slips that represent sales during February, 1943.

Q. Are those the sales slips you testified to that were made in excess of 85c per yard.

A. Yes, sir.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 14.

Mr. Paul Smith: Same objection.

The Court: Overruled. In evidence.

Q. Did you make a search of the Defendant's cost of living commodity statement to determine whether gabardine, a yard goods, was listed therein?

A. Yes, I did.

Q. Would you point out where it is listed?

A. It is listed on page 3.

Q. You now refer to page 3 of Exhibit No. 1 where it says article, "Gabardine", manufacturer, "Belding", description, "Plain", maximum price, 89c; and the second gabardine by "Belding", manufacturer, marked "Plain", with the maximum price \$1.19?

A. Yes.

Q. Now were you able to find any other gabardine, a yard goods, in the cost of living commodity statement?

A. No.

Q. In your investigation of the March, 1942, sales slips did you find any sales of jersey, a yard goods? [172]

A. Yes.

Q. How many did you find?

A. There were five sales in March, 1942.

(Testimony of Donald I. Creel.)

Q. I hand you Plaintiff's Exhibit No. 15 for identification, consisting of four slips, and ask you what that exhibit is?

A. Those are sales slips that cover sales of jersey in March, 1942?

Q. Now is there a fifth sales slip that you examined that does not appear in this exhibit?

A. Yes, there is.

Q. Do you have any notes as to the number of that sales slip? A. Yes, I do.

Q. What is the number of that sales slip?

A. The number of the slip was twelve (12).

Q. During the noon hour did you make a search for that sales slip among the sales slips here tendered by the defendant? A. Yes.

Q. Were you able to find that sales slip?

A. No, I was not.

Q. Do you have notes showing the contents of that sales slip? A. Yes, I do.

Q. What was the contents of that slip?

A. It showed the slip was marked——

Mr. Paul Smith: Objected to as not the best evidence.

The Court: He made a search for it and can't find it, so I guess we will have to do the best we can with what we have.

A. ——the slip was dated March 23, 1942, for three yards of jersey at \$1.65 a yard. Total amount of the sale was \$4.95. The Clerk was No. 9: the sale was made to Vera Wilson.

(Testimony of Donald I. Creel.)

Q. Did it give her address? [173]

A. 700 North Benton.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 15.

Mr. Paul Smith: Objected to on the same ground.

The Court: Overruled. In evidence.

Q. In your examination of the February, 1943, sales slips did you find any sales of jersey?

A. Yes, I did.

Q. How many? A. Sixteen sales.

Q. Did you find any sales in February, 1943, in excess of \$1.65 per yard?

A. Yes, there were eleven sales at \$1.69.

Q. I hand you Plaintiff's Exhibit No. 16 for identification, consisting of ten slips, and ask you what the exhibit is?

A. Those are sales slips that represent sales of jersey in February, 1943.

Q. In excess of \$1.65 per yard? A. Yes.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 16.

Mr. Paul Smith: Same objection.

The Court: Overruled; in evidence.

Q. Mr. Creel, did you make a search of the Defendant's cost of living commodity statement to determine whether jersey was listed therein?

A. Yes, I did.

Q. Were you able to find it listed therein?

A. No, I was not.

(Testimony of Donald I. Creel.)

Q. In your examination of the 1942 sales slips did you find any sales of Indian head, a yard goods?

A. Yes. [174]

Q. How many?

A. There were six sales during March, 1942.

Q. I hand you Plaintiff's Exhibit No. 17 for identification, an exhibit consisting of six slips, and ask you what it is?

A. Those are the sales slips representing sales of Indian head for March, 1942.

Q. Are those the only sales you were able to find during that month? A. Yes.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 17.

Mr. Paul Smith: Same objection.

The Court: Overruled. In evidence.

Q. In your examination of the February, 1943, sales slips did you find any sales of Indian head, a yard goods, in excess of 42c per yard?

A. Yes.

Q. How many?

A. There were six sales in excess of 42c a yard.

Q. I hand you Plaintiff's Exhibit No. 18 for identification, an exhibit consisting of six slips, and ask you what it is?

A. Those are the sales slips representing sales of Indian head in February, 1943.

Q. In excess of 42c?

A. In excess of 42c.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 18.

(Testimony of Donald I. Creel.)

Mr. Paul Smith: Same objection.

The Court: Overruled. In evidence.

Q. Did you make a search of the Defendant's cost of living commodity statement to determine whether Indian Head was listed therein?

A. Yes, I did. [175]

Q. Was it listed? A. I believe it was.

Q. Can you point out in the statement where it is listed? A. Page 4.

Q. You are now designating page 4 of Exhibit No. 1, the word "Indian," and the letter "H", manufacturer, "Butlers", description. "White", and after that the number 44, with the maximum price 49c? A. Yes.

Q. Beneath that, ditto marks under "Indian H.", likewise under "Butlers", manufacturer, and the description "White", and the number 54, with the maximum price 59c? A. Yes.

Q. Are those the only two you were able to find of Indian Head? A. Yes.

Q. During your examination of the March, 1942, sales slips did you find any sales of percale, a yard goods? A. Yes.

Q. How many sales did you find?

A. There were nineteen sales during March.

Q. I hand you Plaintiff's Exhibit No. 19 for identification, consisting of nineteen slips, and ask you what that is?

A. Those are the sales slips for March, 1942, covering sales of percale.

(Testimony of Donald I. Creel.)

Q. Are those the sales slips you testified to as having examined? A. Yes.

Q. Those were the only sales slips you were able to find covering sales of percale? A. Yes.

[176]

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 19.

Mr. Paul Smith: Same objection.

The Court: Overruled. In evidence.

Q. In your examination of the February, 1943, sales slips did you find any sales slip of sales in excess of 29c per yard? A. Yes, there were.

Q. How many were there?

A. There were twenty-five.

Q. I hand you Plaintiff's Exhibit No. 20 for identification, consisting of ten slips of paper and ask you what the exhibit is?

A. Those are some of the sales of percale during the month of February, 1943.

Q. In excess of the sum of 29c per yard.

A. Yes.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 20.

Mr. Paul Smith: Objected to on the same ground.

The Court: Overruled. In evidence.

Q. Did you examine the Defendant's cost of living commodity statement to determine whether percale was listed therein? A. Yes, I did.

Q. Could you designate where it is listed?

A. It is on page 4.

(Testimony of Donald L. Creel.)

Q. You are referring to page 4 of Exhibit No. 1, the word "Plain Perc", style number, "Golden Star", manufacturer, "Rice-Stix", description "80 Sq.", maximum price 35c per yard? A. Yes.

Q. Were you able to find any percale listed any other place in Exhibit No. 1? [177] A. No.

Q. During your investigation of the March, 1942, sales slips were you able to find any sales of ticking, a yard goods? A. Yes.

Q. How many?

A. There were six sales in March, 1942.

Q. I hand you Plaintiff's Exhibit No. 21 for identification, consisting of six slips of paper and ask you what it is?

A. Those represent the six sales of ticking made in March, 1942.

Mr. Wohl: At this time we offer in evidence Plaintiff's Exhibit No. 21.

Mr. Paul Smith: Same objection.

The Court: Overruled. In evidence.

Q. Did you make a search of the cost of living commodity statement to determine whether ticking was listed in it? A. Yes.

Q. Could you point out where it is listed.

A. It is on page 9.

Q. You are referring to page 9 of Exhibit No. 1; you have indicated the word "Ticking", under the word "Article", and style lot number 4388, manufacturer "Mitchell F", description, "Colored", maximum price 65c? A. Yes, sir.

(Testimony of Donald I. Creel.)

Q. You have also designated on the same page toward the end thereof three items marked "ticking", one style lot number "Amoskeig", manufacturer "Butlers", description "Plain", maximum price 35c. The second ticking style lot number 4504, manufacturer "CPS", description "Plain", with the maximum price 69c; and the third ticking the style lot says "Short [178] Length", manufacturer "CPS", description "Striped", maximum price 69c.

A. Yes.

Q. Are those the only tickings you were able to find in the cost of living commodity statement?

A. Yes.

Q. During your examination of the March, 1942, sales slips did you find any sales of burlap, a yard goods?

A. Yes, I found two sales.

Q. I hand you Plaintiff's Exhibit No. 22 for identification, consisting of two slips, and ask you what that is?

A. Those are the two slips covering the sales of burlap in March, 1942.

Q. Were those all of the sales slips you were able to find for sales of burlap, a yard goods?

A. Yes.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 22.

Mr. Paul Smith: Same objection.

The Court: Overruled.

Q. Did you examine Defendant's cost of living commodity statement to determine whether burlap was listed on it?

(Testimony of Donald L. Creel.)

A. As I recall it, it was not listed.

Q. I hand you Plaintiff's Exhibit No. 23 for identification, consisting of four slips, and ask you what that is?

A. Those four slips represent the sale of overalls during February, 1943, at \$3 a pair.

Q. Did you examine Defendant's cost of living commodity statement to determine whether overalls were listed therein?

A. Yes, I did.

Q. Could you point out where they are listed?

[179]

A. They are listed on page 15.

Mr. Wohl: At this time we offer in evidence Plaintiff's Exhibit No. 23.

Mr. Paul Smith: Same objection.

The Court: Overruled. In evidence.

Q. You are now referring to page 15 of Exhibit No. 1, on which appears the word "Overalls", manufacturer "Crown Special", description "Extra Heavy", maximum price \$1.50. A second overall, manufacturer "Long Wear", description "Extra Heavy", maximum price \$1.50. A third overall, manufacturer "Headlight", description "Extra Heavy", maximum price \$1.50. A fourth overall manufacturer "Headlight", description "Bib Large", maximum price \$2. Another overall, manufacturer "Headlight", description "Bib Large", maximum price \$2.50. Another overall, manufacturer "Ruff Rider", description "Waist", maximum price \$1.50. A further overall, manufacturer

(Testimony of Donald I. Creel.)

“Calf Skin”, description “Bib”, maximum price \$1.50. A further overall, manufacturer “Red Kab”, description “Bib”, maximum price \$1.50. Is that all you referred to as the overalls listed in Exhibit No. 1? A. Yes.

Q. Were you able to find any other overalls listed therein? A. No.

Q. I hand you Plaintiff’s Exhibit No. 24 for identification and ask you what that is?

A. That is sales slips representing the sale of five yards of sateen, 59c a yard, February 19, 1943.

Q. Did you make a search of the Defendant’s cost of living commodity statement to determine whether sateen, a yard goods, was listed therein?

A. Yes, I did [180]

Q. And was it so listed?

A. I believe it was.

Q. Could you point out where it is listed?

A. It is listed on page 4.

Q. You are now referring to page 4 of Exhibit No. 1, referring to the item marked “Sateen”, manufacturer “Robinsons”, description “Colors”, maximum price 45c? A. Yes.

Q. Were you able to find any other sateen listed in the cost of living commodity statement?

A. No.

Mr. Wohl: At this time we ask leave to offer Plaintiff’s Exhibit No. 24 in evidence.

Mr. Paul Smith: Same objection.

The Court: Overruled. In evidence.

Q. Mr. Creel, you testified as to having exam-

(Testimony of Donald I. Creel.)

ined these various sales slips as to these various commodities; were they all the sales slips you were able to find between March, 1942, as to those commodities? A. Yes.

Q. Did you inquire of Mrs. Elertson as to whether or not she had given you all their March, 1942, sales slips to examine? A. Yes.

Q. What did she say?

A. She said that was all the slips.

Mr. Wohl: If the Court please, we haven't read these various exhibits in evidence——

The Court: Oh, they will be considered as read. I will have to read them sometime.

Mr. Wohl: I believe that is all. [181]

Cross-Examination

By Mr. David Smith:

Q. Mr. Creel, if you testified you made this examination for the Price Administration during the month of February, 1943, was that the time it was made?

A. No, sir. It was during the month of March; 23rd of March to the 31st, I believe.

Q. 1943? A. Yes, sir.

Q. And you examined the slips for the various sales that Sanden and Ferguson Company had for the month of March, 1942, and compared those sales as to prices and as to particular kind of goods listed, such as percale, burlap, whatever it would be, with the sales of 1943? You compared 1942 slips with 1943? A. Yes, sir.

(Testimony of Donald I. Creel.)

Q. Then you compared those prices with his basic list which he filed with the Board?

A. Yes, sir.

Q. When was the basic list of Sanden and Ferguson Company filed?

Mr. Wohl: That is objected to. There is no requirement the base period statement be filed with anyone.

The Court: Well, it may have been done whether it was required or not. Was it filed with the Office of Price Administration? A. No.

Q. But Sanden and Ferguson Company, however, did prepare a statement, did they not, during 1943 for the price list statement to which you are referring? A. Yes, sir.

Q. And this is the price list to which you did refer at the time when you made your investigation? That is true, is it not? [182]

A. I referred to the one that was on file, and also the one Mr. Sanden had in the store.

Q. You stated there wasn't any filed?

A. There is a statement filed; not the base period statement.

Q. That statement filed is the same statement to which you referred to as being the list prepared by the Sanden and Ferguson Company during 1943, was it not? A. Yes, sir.

Q. Were you acquainted with Mr. Sanden at the time this investigation was made? You met him, did you not?

A. I met him at that time, yes.

(Testimony of Donald I. Creel.)

Q. Did you have any conversation with him and/or any of the representatives or agents of the Sanden and Ferguson Company at the time they were preparing that statement as to what should be placed in there? A. I did not, no, sir.

Q. Do you know whether or not any officials of the Price Administration had a conversation with him? A. I do not know myself.

Q. In other words, you are not acquainted with the circumstances surrounding that period of time that Sanden and Ferguson Company made their statement? A. Not before March, 1943.

Q. This statement that was prepared by the Sanden and Ferguson Company was prepared after the time you made the investigation, was it not?

A. No, sir; it was prepared when I came there.

Q. You mean the statement that the Sanden and Ferguson Company furnished as its price statement?

A. Yes, sir. That was on hand when I came there March 23rd. [183]

Q. When you made the investigation?

A. Yes, sir.

Q. Do you have the original statement that was filed?

Mr. Wohl: That's a certified copy; it is exactly the same.

Q. In other words, then, to clear the matter up, the investigation was made after that statement was filed, prepared and filed by Sanden and Ferguson Company? A. Yes, sir.

(Testimony of Donald I. Creel.)

Q. Referring to those various exhibits which have been introduced in evidence here as being also the slips of Sanden and Ferguson Company, covering the period of 1942 and 1943, there is no relation, is there, between the slips of 1942 and 1943 with relation to the goods listed except that it was a particular kind of goods listed at a certain price? Isn't that true?

A. That is all it shows on the slip, yes, sir.

Q. Now take any one of these various kinds of goods, say, for instance, rayon, percale; any of those particular kinds of goods, they have different prices, do they not? Different lots have different prices?

A. I presume they do, yes, sir.

Q. Do you know the difference in raise between the prices of these various lots?

A. No, sir.

Q. You couldn't tell from those statements that were introduced into evidence as to what particular lots they referred to, could you?

A. No, sir.

Q. You couldn't determine from those statements as to the width or class of goods? [184]

A. No.

Q. And you are also aware of the fact that various kinds of goods have different classes, different weights, different sizes, and so forth?

A. I understood that, yes, sir.

Q. During the time that you were making your examination, taking, for instance the slips that you examined in 1942, also the sales in the month of March, do you recall or do you know how many slips you examined at that time?

(Testimony of Donald I. Creel.)

A. I didn't count them. I estimated there were probably 1500.

Q. Probably 1500 Did you examine very thoroughly at the time when you made your examination to be sure that there were no slips in there that you didn't pull out as being of any particular interest to you during the examination?

A. No, I didn't. I didn't; Miss Clark sorted those out and gave them to me. I didn't count those.

Q. And after this examination of the 1500 slips, the ones you introduced in evidence, so far as you know, are the only ones that were found of any particular interest to the Price Administration?

A. Yes, sir.

Q. After you made your investigation as of March, 1943, did you make any further investigation? Your investigation was made all at one time, was it not?

A. I think I went back to the store once in May; I believe May 15th. Outside of that I recall no other time.

Q. At the time you made your investigation did you find at that time that Sanden and Ferguson Company was out of a lot of goods at that time that they had and did have and sold in 1942? [185]

A. Well, I didn't go into that. That may have been true, but I don't know.

Q. Did you look for any particular kind of goods that were sold as shown by the slips in 1942 that

(Testimony of Donald I. Creel.)

did not show up in 1943 at the time you made your investigation?

A. I don't recall that we did. That could have happened, but that has been some time ago. I don't remember.

Q. The price range is dependent upon the class and character of the goods?

A. I presume that is correct.

Q. Do you know whether or not Sanden and Ferguson Company was carrying the same goods in 1942 and the same class of goods as they were carrying in 1943 at the time you made this investigation?

A. I don't recall off-hand; I might be able to by referring to notes as to purchase invoices. I made no particular note of that at that time.

Q. How long did it take you to make your investigation?

A. As I recall it, it was from March 23rd to March 31st.

Redirect Examination

By Mr. Wohl:

Q. Mr. Creel, Mr. Smith asked you whether it was only these sales slips you examined that were of any particular interest to the Office of Price Administration. You answered, I believe, "Yes." Did you attempt to make a survey or examination of all the commodities sold by Sanden and Ferguson Company?

A. No, I didn't.

Q. In other words, if any other articles may

(Testimony of Donald I. Creel.)

have been out of line, you didn't attempt to discern or disclose that fact? A. No.

Q. You were only concerned with the commodities you testified [186] to here? A. Yes.

EUGENE SANDEN,

having been previously sworn and having previously testified as a witness on behalf of the Plaintiff, was recalled by the Plaintiff and testified as follows:

Direct Examination

By Mr. Wohl:

Q. You are the same Eugene Sanden who has heretofore testified in this case? A. I am.

Q. Mr. Sanden, I believe that I asked you to produce at the trial an invoice from Butler Brothers No. 1-21-2035. Mr. Sanden, on February 9, 1943, you received a shipment of gingham, spun rayon, and gabardine yard goods from Butler Brothers, is that correct?

A. In the answers you called for I stated the date I received them. I couldn't tell you off-hand unless I saw the invoice, the date we received them.

Q. Mr. Sanden, I hand you Plaintiff's Exhibit No. 25 for identification and ask you what that is?

(Testimony of Eugene Sanden.)

PLAINTIFF'S EXHIBIT No. 25

National Distributors of General Merchandise
(Emblem)

BUTLER BROTHERS

Chicago - St. Louis - Baltimore - New York - Minneapolis

Dallas - San Francisco

First Ave., North & Sixth St., Minneapolis, Minnesota

34 [In pencil]: April 1st B

Date: 2/2/43 Order No. 1 21 2035 Amount 194 27

Folio B 92 C 204 Terms: 2% April 10 Net May 10

Bills after 25th of month as of first of following month. Interest charged on past due accounts. In correspondence relating to this invoice, mention order number and date of Invoice.

Sanden & Ferguson Co.

Helena

Montana

Please mail this top stub with your remittance

Date	2/2/43	Route	NP 2 PC	Butler Brothers
12 4425	150 yds	Swanee Suede		48½ 72 75
		16 18 19 18 18 15 15		
		16 15		
12 4435	33 yds	Bemberg	18 15	66 21 78
			18	
	4175	63 yds	Spun Rayon 15 15 15	49¼ 31 03
12 7350	yds	Broadcloths		Partial Shipment
12 7318	91 yds	Ginghams	29 31 31	247/8 22 41
12 4165	15 yds	Gaberdine		401/8 6 02
12 3319	30 yds	Broadcloths		173/8 5 21
12 3325 S	28¾ yds	"		291/2 8 95—47*
	3324			
	3255	41½ yds	Cloths	261½ 11 00

(Testimony of Eugene Sanden.)

12 3085	411½ yds	Seersucker	367/8	15 12 + .20
12 4425/211	yds	Swanee Suede	Partial Shipment	

194 27

Overcharge .27*

\$194.00

Nov. 28 av.= 1.00

193.00

[Circled in pencil]: 3.85

189.15

~~38600~~ Paid 2/10/43 S

[Stamped]: Feb 4 - 1943 OK ES 2/9/43

[Stamped]: The net selling price of merchandise governed by Maximum Price Regulation No. 127 does not exceed the maximum price permitted thereunder.

Some problems of pricing are still subject to clarification. The seller, in good faith, has used its best judgment in pricing merchandise on this invoice, however, it reserves the right in the event it is determined that any such merchandise is not priced in compliance with applicable governmental regulations, to adjust any or all of these prices accordingly.

XX Temporarily Out—Please	K Not Stocked at this Location
Reorder	F To be Shipped from Factory
XX Discontinued	D Description Inadequate,
M Less Than Minimum	Please Reorder
Packing	NA Not Available
S Substitute	

When we or our factories deliver goods to transportation companies in good order our responsibility ceases, and any claims for loss or damage should be taken up directly with the transportation companies. Claims of any other nature must be made within 5 days after receipt of goods.

* Indicates figures in red.

[Endorsed]: Filed Jan. 15, 1944.

(Testimony of Eugene Sanden.)

A. This is an invoice from Butler Brothers, billing us with various kinds of piece goods, including swanee suede, bemberg, spun rayon, broadclothes, seersucker, and there is something else I can't make out.

Q. By piece goods would that include yard goods?

A. Yes, we understand that in the trade to be the same thing.

Q. Now, I hand you plaintiff's Exhibit No. 26 for identification and ask you what that is?

PLAINTIFF'S EXHIBIT No. 26

Telephone: Pennsylvania 6-1366

Invoice No. 19957

YALE FABRICS CORP.

CK 13-62

F

501 Seventh Avenue
New York

Sold to:

Sanden & Ferguson Co.
Helena, Montana

[In pencil]: May 12th B

Order # 10415 Dept B

Date: 3/12/43 Terms F.O.B. Shipping Point: 2% 10 60 Days
Shipped at Your Risk Via: Ry Exp Salesman: Silberman

[Circled in pencil]: This account has been assigned and is payable only to United Factors Corporation, Factors, 1412 Broadway, New York City,

who are to be notified at once of any objections to this bill. Payment must be made direct to United Factors Corporation in New York City bankable funds at par.

Prompt examination is necessary, as No Claims will be accepted after five days from receipt, or after goods are cut.

(Testimony of Eugene Sanden.)

Jersey 5	Pat	1173	10 00	20
	6A	1031	364 54	20
	9	1109	357 79	18 $\frac{5}{8}$
	3	1193	387 64	19
	2	1110	399 32	20
	4	1110	367 66	20
	3	1139	417 36	18

135 $\frac{5}{8}$ 1.02 $\frac{1}{2}$

139.02 \$139.02

[Circled in pencil]: 2% = 3.77

135.25

Paid 3/22/43 S

DP 15.00 [In pencil]: OK ES 3/19/43 378

7 Pes [Stamped]: Mar 22 1943

[In pencil]: "Rayon Jersey" 54e29

[Endorsed]: Filed Jan. 15, 1944.

A. Yale Fabrics Corporation. This is a shipment of jersey, rayon jersey I believe it was, we received from them.

Q. Now can you tell from Exhibit No. 25 the lot number of the [187] gingham and yard goods appearing thereon?

A. Yes, it is stated here the lot number is 7318, 12 is the house department number.

Q. And with the gaberdine yard goods, what would the lot number of that be?

A. That is 4165.

Q. With the spun rayon yard goods?

A. 4175.

(Testimony of Eugene Sanden.)

Q. Now with regard to Plaintiff's Exhibit No. 26 for identification, what would be the lot number of the jersey you purchased?

A. There is no lot number.

Q. Isn't there any?

A. There is only the pattern number, and every piece or every cut of these cuts come off of a piece of jersey maybe 100 yards long; they cut off 20 yards and send it to us. They have itemized each piece by the pattern number, but these pieces happen to be of the same quality and the only way you can tell the quality is by the price.

Q. The quality would be identified also by this pattern number?

A. Not necessarily. The pattern number might be on several different qualities. In other words they might use the same design on two or three different qualities of rayon jersey and still it would be a different article entirely. And all of these houses, by the way, are not manufacturers; they are jobbers. That is those two are, piece goods jobbers. They buy that cloth from the mills and their sales agents.

Q. In other words on your base period statement and cost of living commodity where you have manufacturer you don't always [188] mean manufacturer?

A. No. It isn't required that you tell the manufacturer; that would be impossible. Even the jobbers don't know often times. They get them from printers, bleachers.

(Testimony of Eugene Sanden.)

Mr. Wohl: At this time we would like to offer in evidence Plaintiff's Exhibit No. 27 for identification, which is Answers to Certain Interrogatories submitted by the Plaintiff to the Defendant in accordance with the provisions of Rule 33 of the Federal Rules of Civil Procedure. The answers also include the questions.

Mr. Paul Smith: Objected to on the ground it is not the best evidence. The witness is here on the stand and testifying.

Mr. Wohl: We will withdraw the exhibit if they have no objection to our questioning the witness.

The Court: The purpose of interrogatories is to shorten the trial; get admissions of fact material to the issues. However, if you want to proceed by examination——

Mr. Wohl: I will renew my offer and submit the offer again of Plaintiff's Exhibit No. 27 in evidence.

Mr. Paul Smith: No objection.

The Court: Well, it is on the record.

Mr. Wohl: It isn't filed.

The Court: In that case it isn't on the record and the Court can't take judicial notice of it. You will have to have it marked.

Q. Mr. Sanden, I hand you Plaintiff's Exhibit No. 27 for identification and ask you what that is?

(Testimony of Eugene Sanden.)

PLAINTIFF'S EXHIBIT No. 27

In the District Court of the United States
for the District of Montana

No. 173

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff,

vs.

SANDEN AND FERGUSON COMPANY, a
Montana corporation,

Defendant.

ANSWERS AND INTERROGATORIES
UNDER RULE No. 33 OF THE FEDERAL
RULES OF CIVIL PROCEDURE

Comes now Eugene S. Sanden, having been first duly sworn, according to law, to testify on behalf of the defendant and makes the following answers to the interrogatories requested by the plaintiff under Rule No. 33 of the Federal Rules of Civil Procedure for the District Courts of the United States, as follows:

Question 5: What was the highest price at which each of said yard goods listed in Interrogatory No. 4 sold for, or in the event no sales were made, the highest offering price, during the month of March, 1942?

Answer 5: Do not know.

(Testimony of Eugene Sanden.)

Question 8: Did Sanden and Ferguson Company receive a shipment from Butler Brothers about February 2, 1943, of each of the following yard goods and if so what was the lot number of each, what material or materials were the same made of and when was each first offered for sale:

- (1) Gingham?
- (2) Spun Rayon?
- (3) Gabardine?

Answer 8: We received a shipment February 9, 1943 containing gingham, spun rayon and gabardine.

Question 9: Did Sanden and Ferguson Company receive a shipment of jersey, a yard goods, from Yale Fabrics Corporation about March 12, 1943, and if so what was the lot number of the same, what material or materials was it made of, and when was it first offered for sale?

Answer 9: We received a shipment from Yale Fabrics Corporation March 19, 1943, containing 135 $\frac{5}{8}$ yards of jersey. The jersey was made of rayon. Do not know when it was first offered for sale.

Question 10: Did Sanden and Ferguson Company receive a shipment of "Sunspun" chenille bedspreads, Lot No. 196, on or about January 7, 1943, and if so what kind of material or materials were the same made of and when were they first offered for sale?

Answer 10: We received a shipment February 3, 1943 containing eight chenille bedspreads No.

(Testimony of Eugene Sanden.)

196. They were made of cotton muslin foundation, with cotton chenille tufting. Do not know when they were first offered for sale.

Question 11: During the months of December, 1942, and January, 1943, or either of said months, did Sanden and Ferguson Company offer for sale any of the following yard goods and if so what material or materials were each made of:

- (1) Spun rayon?
- (2) Jersey?
- (3) Canvas?

Answer 11: We did.

Question 13: Was it the business practice of Sanden and Ferguson Company on March 1, 1942, and continuously thereafter to date hereof to issue a sales slip as evidencing each sale of a commodity and if so does Sanden and Ferguson Company retain a copy or the original of each such sales slip?

Answer 13: Yes. We have original sales slips of cash transactions for one year, and of credit transactions for five years.

Question 14: Was Lydia G. Clarke ever employed by Sanden and Ferguson Company and if so over what course of time and in what capacity?

Answer 14: Lydia G. Clarke has been employed as a saleswoman since April, 1920.

Question 15: Was Inga Ellertson ever employed by Sanden and Ferguson Company and if so over what period of time and in what capacity?

Answer 15: Inga Ellertson has been employed by Sanden and Ferguson Company since December 1911. She is in charge of credits and office work.

(Testimony of Eugene Sanden.)

Question 16: Who is the General Manager of Sanden and Ferguson Company and how long has he been such manager?

Answer 16: Eugene S. Sanden is the acting manager, and has been for 15 years.

EUGENE S. SANDEN.

Subscribed and sworn to before me this 12th day of January, A. D., 1944.

[Seal] PAUL W. SMITH

Notary Public for the State of Montana Residing at Helena, Montana.

My Commission Expires June 24, 1946.

[Endorsed]: Filed Jan. 15, 1944.

A. There are answers to questions submitted to me,—well, for the various purposes. Just simply a list of answers to different interrogatories. [189]

Q. Submitted by the Plaintiff in this action?

A. Yes, submitted by the Plaintiff in this action.

Q. Which you answered?

A. I have answered them, yes.

Mr. Wohl: We offer in evidence Plaintiff's Exhibit No. 27.

Mr. Paul Smith: No objection.

The Court: In evidence without objection.

Mr. Wohl: We offer in evidence at this time Plaintiff's Exhibit No. 25 for identification, and Plaintiff's Exhibit No. 26 for identification.

Mr. Paul Smith: Objected to on the grounds

(Testimony of Eugene Sanden.)
they are incompetent, irrelevant, and immaterial;
they have no bearing upon the *issued* involved in
this case.

The Court: What is the purpose?

Mr. Wohl: The purpose is to show they received
a shipment of jersey in February, 1943, and also
they received a shipment of gaberdine, rayons, and
spun rayons.

The Court: In other words, in support of your
contention that they had supplies from which they
could make the sales they made?

Mr. Wohl: No, our contention is they received
new articles and did not list them on the supple-
ment to their cost of living commodity.

The Court: I think it is material for that pur-
pose. Exhibit No. 25 will be received in evidence;
overruled. Same with reference to Exhibit No. 26.

(At this point the Court took a short recess,
after which the following proceedings were
had:)

LYDIA G. CLARK,

called as a witness on behalf of the Plaintiff, being
first duly sworn, testified as follows: [190]

Direct Examination

By Mr. Wohl:

Q. What is your name?

A. Lydia G. Clark.

Q. Mrs. Clark, by whom are you employed?

A. Sanden and Ferguson Company.

(Testimony of Lydia Clark.)

Q. How long have you been employed by that company? A. Twenty-three years.

Q. In what department of the store do you work?

A. I work in Department "B", or the dry goods, consisting of dry goods, and so on.

Q. Does that include yard goods? A. Yes.

Q. Did you assist in the preparation of a cost of living commodity statement for Sanden and Ferguson Company? A. I did assist.

Q. Did you assist in preparing a base period statement for that company?

A. Do you mean the listing of the items?

Q. Yes. A. I did.

Q. Could you tell us just what prices were used in making those statements?

A. What prices you mean?

Q. Yes.

A. The prices that were on the bolts.

Q. At what time were the statements prepared?

A. You mean the date?

Q. Yes; approximately the time.

A. Just a few days when Florence MacPherson took them.

Q. When was that? [191]

A. I couldn't just say.

Q. Do you know the month?

A. I don't believe I even paid any attention.

Q. Was it in January, 1943?

A. I wouldn't say; I couldn't say.

Q. I hand you Plaintiff's Exhibit No. 1 and direct your attention to the front page thereof on

(Testimony of Lydia Clark.)

which appears the words "To February 1, 1943", and ask, after having seen that, it refreshes your recollection as to when the statement was prepared?

A. It was prepared almost a year before that; just the date I couldn't give you.

Q. You mean in 1942, or 1943?

A. I couldn't tell you when it was prepared.

Q. In preparing these statements were the prices taken from the various commodities as they were offered for sale at the time the statements were prepared?

A. Yes.

Q. Do you know if there was any change in the prices of yard goods in the month of March, 1942, to the month of January, 1943, in selling price?

A. No, I wouldn't say there was; there wasn't.

Q. Mrs. Clark, I direct your attention to Plaintiff's Exhibit No. 24, which has been testified herein as sales slips issued by Sanden and Ferguson Company. I direct your attention to the words on there, "5 yd sateen," the figure "59", and the other figure "2 95", and ask you if you know what that represents?

A. That represents black sateen.

Q. Is that a yard goods?

A. Yes. [192]

Q. Now I direct your attention to Plaintiff's Exhibit No. 22 and ask you if you will tell me what that sales slip represents?

A. That is burlap.

Q. Is that a yard goods?

A. Yes.

Q. Will you look at the sales slip underneath that, the same exhibit? Does that represent a sale of yard goods?

A. Yes.

Q. I direct your attention to Plaintiff's Exhibit

(Testimony of Lydia Clark.)

No. 21, consisting of several slips, and ask you to go through each slip and tell me whether you know what each slip indicates a sale of?

Mr. Paul Smith: Objected to on the ground these slips are not being identified to Mrs. Clark.

The Court: They apparently have all been admitted in evidence. If she doesn't know what they indicate, why of course that is a matter of importance. A. They are tickings.

The Court: On the record as it stands now it appears she is the head of this particular department. She ought to know what they are.

Mr. Paul Smith: Unless she made them out she wouldn't know.

The Court: Whether she made them out or not, she is the head of the department and is supposed to know.

Mr. Paul Smith: Objected to on the ground it is not properly identified any way.

The Court: Overruled; these matters are all in evidence.

Q. Yes, these are exhibits that are in evidence. What do you mean by ticking? Is that a yard goods? A. That is a yard goods. [193]

Q. I direct your attention to Plaintiff's Exhibit No. 20, which purport to be sales slips issued by Sanden and Ferguson Company, and I ask you to examine each one of the sales slips making up that exhibit and tell us what those sales slips evidence as to percale only? A. Percale.

Q. Is that a yard goods? A. Yes.

(Testimony of Lydia Clark.)

Q. I direct your attention to Plaintiff's Exhibit No. 19 and ask you to check through each one of those slips with regard to the word percale written thereon and tell us what those slips indicate the sale of? A. Percale.

Q. A yard goods? A. Yes.

Q. I direct your attention to Plaintiff's Exhibit No. 18, and particularly to the lettering there, "I", followed by the word "Head", and ask you what that means? A. Indian head.

Q. Is that a yard goods? A. Yes.

Q. Would you say the same is true of Plaintiff's Exhibit No. 17, the word "I" "Head"?

A. Yes, Indian Head.

Q. A yard goods? A. Yes, sir.

Q. I direct your attention to Plaintiff's Exhibit No. 15, with reference to the word jersey, and ask you to check through each one of the slips comprising that exhibit and tell us what is represents the sale of? [194]

A. Printed and plain jersey.

Q. A yard goods? A. Yes.

Q. I direct your attention to Plaintiff's Exhibit No. 16, particularly with regard to the word jersey, and ask you to examine each of those sales slips and tell us what they evidence?

The Court: I notice that on that exhibit there are some figures on the outside.

A. That's our figuring; it is just where we measure and figure out the price.

(Testimony of Lydia Clark.)

The Court: Does that apply to the figures on the back of each of these slips?

A. Not always, just depends how we figure it out on the back sometimes. I would say some of these are plain and printed jersey.

Q. A yard goods? A. Yes.

Q. I direct your attention to Plaintiff's Exhibit No. 5 and ask you to check through each one of those sales slips and tell us what they evidence the sale of?

A. Those are different qualities of gingham.

Q. A yard goods? A. Yes, sir.

Q. I direct your attention to Plaintiff's Exhibit No. 7, particularly to the word denim, and I ask you to check through those sales slips and tell us what they represent the sale of?

A. Well, that could be dress denim or overall denim.

Q. That's a yard goods? A. Yes. [195]

Q. I direct your attention to Plaintiff's Exhibit No. 6 with reference to the word "gin." What is that? A. That's gingham.

Q. I will ask you to check through each one of the sales slips making up that exhibit and tell us what they represent only with regard to gingham?

A. Well, would be different qualities of gingham, which is a yard goods.

Q. I direct your attention to Plaintiff's Exhibit No. 14, particularly with reference to the word gaberdine, and ask you to check through each one

(Testimony of Lydia Clark.)

of those sales slips and tell us what sales they evidence?

A. Different qualities of gaberdine.

Q. Is that a yard goods? A. Yes, sir.

Q. I direct your attention to Plaintiff's Exhibit No. 13, particularly with reference to the word gaberdine appearing thereon, and ask you to check through each one of those sales slips and tell us what those sales slips evidence?

A. Some cotton gaberdine and some rayon gaberdine.

Q. Those are yard goods? A. Yes.

Q. Directing your attention to Plaintiff's Exhibit No. 12, "1/3 Eylet 79 27," what does that evidence?

A. It is eyelet embroidery used for blouses.

Q. A yard goods?

A. It is a yard goods, yes.

Q. Do you recall what that eyelet was made of, what kind of material?

A. Just eyelet embroidery, white batiste with embroidered eyelet in it. [196]

Q. Is it cotton? A. It is cotton.

Q. Directing your attention to Plaintiff's Exhibit No. 11, particularly with reference to the word "spun Rayon". Will you check through those sales slips and tell us what they evidence?

A. It may be printed rayon. It could be plain or printed rayon, which is a yard goods.

Q. Directing your attention to Plaintiff's Exhibit No. 10, particularly with reference to the

(Testimony of Lydia Clark.)

word "spun Rayon". Will you check through and tell us what that evidences?

A. Different qualities of rayon, a yard goods.

Q. I direct your attention to Plaintiff's Exhibit No. 9, to the words "9 yd Challie 2 25." What does that mean?

A. Challis is a comfort covering, cotton material.

Q. A yard goods? A. Yes.

Q. I ask you to examine Plaintiff's Exhibit No. 8 with reference to the word denim. Examine each of those sales slips making up that exhibit.

A. Different qualities of denim, which is used for overalls or children's garments.

Q. Would that be a yard goods?

A. That would be a yard goods.

Q. Now I direct your attention to Plaintiff's Exhibit No. 1, page 4 thereof, to the word "Gingham," "Golden Rod," "Carsons," 39c, and I'll ask you if you know what refers to? Would that be yard goods?

A. Oh, yes; that's a yard goods.

Q. Now I direct your attention to page 9 of the same exhibit [197] to the word "Chali," lot number 5904, "CPS," maximum price 32c and ask you if that is a yard goods? A. Yes, it is.

Q. I direct your attention to the word "Ticking" on page 9 of Exhibit No. 1, lot number 4388, "Mitchell F" manufacturer, description, colored, maximum price 65c, and ask you if that represents a yard goods? A. Yes, sir.

(Testimony of Lydia Clark.)

Q. I direct your attention to two items of denim on page 9, Exhibit No. 1, one being described as lot 5028, and the other as "overall", and having maximum prices of 45c and 35c, respectively, and ask you if they represent yard goods?

A. Yes, they do.

Q. I direct your attention further on the same page 9 of Exhibit No. 1 to the word "Burlap", plain, maximum price 45c, and ask you if that is a yard goods? A. Yes, sir.

Q. Further on the same page 9 I direct your attention to three items of ticking, one "Amoskeig," one having lot number 4504, and one being described as a short length, and ask you if those three items represent yard goods? A. Yes.

Q. I direct your attention to page 3 of Exhibit No. 1, to the word "Eyelette", manufacturer "Robinsons", description, white, maximum price \$1, and ask you if that represents a yard goods?

A. It does.

Q. I direct your attention further on the same page 3 to two items of gaberdine appearing thereof manufactured by Belding, description, plain, one having a maximum price of \$1.19, and one having a maximum price of 89c, and ask you if they represent [198] yard goods? A. They do.

Q. I direct your attention to page 4 of Exhibit No. 1, to the word "Plain Perc", "Golden Star", manufacturer "Rice-Stix," description 80 sq., maximum price 35c a yard, and ask you if that is a yard goods? A. It is.

(Testimony of Lydia Clark.)

Q. I direct your attention further on page 4 to two items of "Indian H.", manufactured by Butler Brothers, one being described as white with the number 44 immediately after it; the second is white with the number 54 immediately after it; one having the maximum price of 49c, one with the maximum price of 59c, and ask you if those two items refer to Indian head, a yard goods?

A. They do.

Q. I direct your attention to page 4 of Exhibit No. 1, to the word "Sateen", manufacturer Robinsons, description, colors, maximum price 45c, and ask you if that represents a yard goods?

A. Yes, sir.

Q. Now, Mrs. Clark, on about February 9th Sanden and Ferguson Company received a shipment of ginghams, spun rayon, and gaberdine from Butler Brothers. Do you know when those articles were offered for sale in the store?

A. If they were offered for sale?

Q. Yes. Do you recall the shipment came in?

A. I couldn't recall just exactly a certain shipment, but we have them brought up and checked and then we put them on the shelf, but just a certain one——

Q. I direct your attention to Plaintiff's Exhibit No. 25, which is a purchase invoice, showing the purchase of lot 4175 [199] of spun rayon, a yard goods; lot 7318, gingham, a yard goods; and lot 4165, gaberdine, a yard goods. This copy is dated February 2, 1943. Do you know whether those

(Testimony of Lydia Clark.)

commodities were placed on sale at the Sanden and Ferguson Company? A. Yes.

Q. Do you know approximately the time?

A. Just the date they were checked in they were brought up.

Q. And placed for sale? A. Yes.

Q. Now, then, about March 19, 1943, Sanden and Ferguson Company received a shipment of jersey, a yard goods, from the Yale Fabrics Corporation. Do you recall that shipment?

A. Yes.

Q. Do you know when it was offered for sale?

A. Well, right after it was checked it was offered for sale.

Q. About how soon? Within a few days?

A. Within a few days, yes.

Q. Do you recall whether during the month of March you were selling canvas, a yard goods, at 35c per yard?

A. Month of March? What year?

Q. 1943.

A. 1943? I don't definitely remember selling it just at that time, but then I probably did.

Q. Do you remember having it on the shelves for sale?

A. We have now; we had then.

Q. Do you recall what the canvas was made of?

A. Cotton goods.

Cross-Examination

By Mr. David Smith:

Q. Mrs. Clark, referring to these slips that

(Testimony of Lydia Clark.)

were handed to you marked as Exhibits 8, 9, 10, and so forth as Mr. Wohl just [200] referred to them, were all of these items sold by you?

A. No.

Q. Does each sales lady have a particular number? A. Yes.

Q. Do you always use the same number?

A. Not definitely; sometimes if it is the other party's sale we put it on their book.

Q. Could you tell by looking at each of these statements exactly who made the sale?

A. Well, not definitely, no. Probably could——

Q. For instance here you have denims, these sales, for example, Exhibit No. 8, and ask you if you can tell me who made those various sales there? A. Mrs. Mills and I.

Q. Can you tell by the writing? A. Yes.

Q. Now referring also to these Exhibits No. 8, which apparently were introduced in evidence as sales as of February, 1943, referring in each case to denim, is this the same identical class and kind of goods of denim that was sold by Sanden and Ferguson Company in March of 1942?

A. Not necessarily, no.

Q. Are there different kinds and classes and qualities of denim? A. Yes, sir.

Q. How much of a range is there in this class of goods, in this kind of goods—denim?

A. Well I would say if you took all of them in you might go to ten, fifteen ranges; different qualities and different uses for them. [201]

Q. Can you tell by the examination of these

(Testimony of Lydia Clark.)

slips as to what kind and quality was indicated by the slips? A. I couldn't, no.

Q. Did you have in February, 1943, different kinds and classes and qualities of denim?

A. We did.

Q. What is denim?

A. Well, denim is a weave that would be—well, like overall denim, or children's garments made from denim. And there is a denim you would use for—khaki denim—that is used for men's trousers, different things of that type.

Q. This is all listed in the price list of Sanden and Ferguson Company with the Price Administration as denim? A. Yes.

Q. At the time when you listed those various kinds of denim, did you list every kind of denim that you had on your shelves at that time?

A. Yes, we did.

Q. And in 1942 would there be any change particularly in class, range of price, and quality between 1942 and 1943 that you would recall particularly?

A. Well, we may have gotten some of the other types of denim in and put them on the shelves, but that wouldn't say they were the denim we listed.

Q. Do you know whether or not there was any raise in price in any particular kind of denim that was sold in March, 1942, and sold in March, 1943, and was the same class? A. No.

Q. Were you instructed at any time by Sanden

(Testimony of Lydia Clark.)

and Ferguson Company to raise prices on any of these staple goods articles? [202] A. No.

Q. Do you recall of you yourself or anyone working under you in this department so changing prices or raising, or lowering prices of staple articles between that time? A. No.

Q. Referring also to other items as listed in here like spun rayon, are there different classes and qualities of spun rayon? A. There are.

Q. Would they all be the same width?

A. They would run all 39.

Q. But there are different classes?

A. Yes, printed and plain and different qualities.

Q. Do you know whether or not later on you discovered any small amounts, ends of bolts, or anything of that kind, that were not listed on the price list?

A. There were several small lengths and odds and ends that we never listed at all.

Q. Why didn't you list them?

A. Well, we usually take them and put them in the remnants or sell them for less money. They weren't of any value definitely.

Q. Could there have been any bolts of yard goods in the possession of Sanden and Ferguson Company of a higher quality that weren't listed that might have been sold for a higher price perhaps than some yard goods might have come in 1943? A. No.

Q. What is challis?

(Testimony of Lydia Clark.)

A. That's a cotton fabric, printed, for covering comforts.

Q. Do they come in different widths?

A. No; 36 inches. [203]

Q. Are they all in the same price range?

A. No; they could be a different weight.

Q. How much change would there be?

A. Well, you could get it from I would say 15c up.

Q. What governs the price you place on an article when it comes into the store?

A. Well, mostly the cost and the quality of the garment or yard goods; whatever it is.

Q. Crepe and gaberdine, are they of different classes? A. Yes.

Q. Different qualities? A. Yes.

Q. And with relation to all of these various kinds of goods, there would be different qualities which you would have in March, 1942, than you would have in February or March of 1943?

A. Yes.

Q. And vice versa? A. Yes.

Q. What system did you use at the time when you made out, or helped with the making out of the statements as to what class of goods were listed? Did you list goods as of 1942, or goods as of 1943?

A. You mean——

Q. When you listed them in this price list that Gene's sister Florence helped you with.

A. We took the prices right off the bolt on the shelf.

(Testimony of Lydia Clark.)

Q. In other words, the price listed at that time were articles on the shelf in 1943 when the listing was done? A. Yes.

Q. Are there different classes of gingham?

[204]

A. Well, I would say there would be fifteen or twenty qualities of gingham.

Q. Different classes and qualities. Each one would have a different price? A. Yes.

Q. Would they have different weights and different widths? A. Yes.

Q. What is jersey?

A. It is a knitted fabric.

Q. All the same width? A. No.

Q. Are there any different ranges as to price and quality? A. Yes.

Q. What would that range be?

A. Well, there would be plain jersey and there would be printed jersey, and different weights.

Q. What is the difference between printed jersey and plain white jersey?

A. Well, we have plain jersey at \$1.65, and printed jersey at \$1.69. And then we even have wool jersey that we listed; no, we didn't have it when we put in the lists.

Q. How soon thereafter did you get that?

A. Just how soon I couldn't say.

Q. Did you have any wool jersey that you know of in March, 1942? A. No, sir.

Q. Do you know whether you did or not?

A. No, sir.

(Testimony of Lydia Clark.)

Q. Can you tell by looking at these slips as to what quality and kind of jersey it was? [205]

A. I could by the price.

Q. You can tell by the price? A. Yes.

Q. That is the only way you could indicate it?

A. From the slips. If I saw the material I could tell.

Q. Indian head. Does Indian head come in the same width?

A. No, it comes in six different widths and colors?

Q. Same weight?

A. I wouldn't even say that if it is real indian head; there are other cloths could be Indian head.

Q. Different qualities? A. Yes.

Q. And each of these various widths and weights and qualities would govern the price, would it not? A. Yes, and then color.

Q. Did you have the same article in March, 1942, that you had in 1943 in Indian head?

The Court: We will hope they sold some between those dates.

Q. As a matter of fact, referring to, for instance, percale, and these tickings, burlap, sateen, are they all of the same class and kinds sold in 1943 as was sold in 1942?

A. Yes, they are; that is we might not have had it when we made that list out; when we got it it would be a better quality than when we listed.

Q. In other words, you had the same range of prices with regard to your goods?

A. Yes, sir.

(Testimony of Lydia Clark.)

Q. And the only way you can identify the quality and class of goods by the slips is by the price? A. Yes. [206]

Q. And the price might be different at different times in the store? A. Yes.

Q. And each one of these classes of goods have a different classification? They have a different price range, quality, weights, widths, and so forth?

A. Yes, sir.

Q. This Plaintiff's Exhibit No. 23 refers to overalls, does it not?

A. I am not in that department.

Q. You are in department "B"? A. Yes.

Q. This is in department "F"? A. Yes.

STEPHEN T. McDERMOTT

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Wohl:

Q. State your name, please.

A. Stephen T. McDermott.

Q. By whom are you employed?

A. The Office of Price Administration.

Q. How long have you been so employed?

A. Since October 19, 1942.

Q. In what department are you employed?

A. I am in the price division.

Q. Are you acquainted with Eugene S. Sanden?

A. Yes, sir.

(Testimony of Stephen T. McDermott.)

Q. I will ask you whether or not during the month of January Eugene S. Sanden and his sister, Mrs. MacPherson, had a conference with you and Mr. Loren Anderson at the Office of Price [207] Administration in their office in the Placer Hotel, Helena, Montana? A. That is correct.

Q. Would you state briefly just what took place at that conference?

A. Mr. Sanden and his sister visited the office and they had a warning notice from the Office of Price Administration in Denver——

The Court: That is not important; you don't know that at all. Answer the question.

Q. Just tell what you know.

A. He questioned us regarding what records were necessary and for the various regulations and the outline of what should be done and we delivered to him a copy of retailer's bulletin No. 2, entitled "What Every Retailer Should know about the General Maximum Price Regulation." At that time we discussed fully what the record should consist of.

Q. Did Mr. Sanden or his sister inquire as to what should be included in the base period statement? A. Yes, they did.

Q. Did you inform them as to what should be included therein? A. Yes, we did.

The Court: What did you tell him?

A. We told him every item in his store must be included in his base period list, reflecting the prices of those items as of March, 1942.

(Testimony of Stephen T. McDermott.)

The Court: Does every article in every store fall within the cost of living commodity statement?

A. Not in the cost of living it doesn't; but the base period list——

The Court: In other words, your organization requires every [208] merchant dealing with goods in America, these United States, to give an absolutely complete list of everything in the store?

A. And the price on that item March, 1942. That is not required to be filed, but must be maintained in the establishment.

The Court: What is the approximate cost of such a thing?

A. It would depend entirely on the size of the store.

The Court: A store the size of Sanden and Ferguson's.

A. The help situation as it is, perhaps one year after it should it would cost more than if that item had been made——

The Court: Tell me what the approximate cost would be when it came in.

A. What is the wage rate?

The Court: I haven't any idea, but I am living in America; I like to know what burdens are being put upon the citizens; it has a bearing upon the Constitutional question, whether the Government has a right to say you must. If you can't tell us what the cost would be in a store of the kind Sanden and Ferguson's had, of course you can't.

A. I couldn't without going into further records.

(Testimony of Stephen T. McDermott.)

The Court: The Defendant is contending that it is taking of property without the due process of law. The cost of complying with these rules may have a bearing on the issues; that is why I am interested in it.

Q. I believe you testified you gave Mr. Sanden Bulletin No. 2? A. That is correct.

Q. I show you Plaintiff's Exhibit No. 4 and ask you if that is a copy of that bulletin?

A. It is a copy.

Q. Did Mr. Sanden ask as to how to prepare a cost of living commodity statement at that time?

[209]

A. He did.

Q. And what did you advise him?

A. We turned to the page in the book where it is outlined as to the procedure that should be followed in making up such lists, and then pointed out that these items he has must all be listed; the prices that these items were offered for sale during March, 1942 must also be shown there and not present prices unless the prices were exactly the same.

The Court: When was this talk?

A. This was in January, 1943.

The Court: How did you expect him to determine what the selling price was in March, 1942?

A. That would require detailed study of their invoices and sales tickets.

The Court: Which would be a matter of some doubt after detailed study?

A. Generally speaking it shouldn't be too dif-

(Testimony of Stephen T. McDermott.)

ficult where your lines of merchandise are pretty well stabilized.

The Court: Did you ever try to do it?

A. I have had to do it. I have been in the retail business——

The Court: Under O.P.A. direction?

A. Not under O.P.A. direction, I haven't. The retail business in which I had to prepare this list was prepared in from May and early June of 1942. The cost of producing it in our store, which was a store doing approximately a half a million dollar business, was the employee's time of one day, which would amount to about \$90.

The Court: That was in April and May following March? A. Yes, sir.

The Court: When the invoices were all on hand and apparently [210] in order?

A. And very much of the merchandise was on the shelf that was there during the month of March.

The Court: We are dealing with another situation, May and March and different years, and we are dealing with conditions in Helena; the labor shortage; probably not as accurate in bookkeeping as they are in other places, but we will pass it if you don't know what the cost would be to Sanden's, you just don't know. Proceed.

Q. You mentioned this conversation took place with Mr. Loren Anderson. Will you tell us who Mr. Anderson is?

A. Mr. Loren Anderson is State Price Executive of this District, which includes the State of Montana.

(Testimony of Stephen T. McDermott.)

Q. Was there a Mr. Wertz connected with the Office of Price Administration?

A. Mr. Wertz was Enforcement Attorney for the Office of Price Administration.

Q. Is he now employed by the Office of Price Administration? A. He is not.

Cross-Examination

By Mr. David Smith

Q. Did you require a merchant to change his method of doing business in any way for the filing of these statements?

A. Did we request him? No, we did not.

Q. As a matter of fact under the regulations is it not true that the merchant does not have to change his method of doing business for the purpose of satisfying the Government as to his price level?

A. Under the general maximum price regulation that is correct; they were not required to. Since that time there have been some regulations dealing with specific regulations that may change [211] some types of business so far as operation is concerned. More particularly I have in mind ready-to-wear.

Q. When did that change take place?

A. That change took place February 24, 1943, the date that maximum price regulation 330 went into effect.

Q. Was that included in the pamphlet you handed Mr. Sanden?

A. No, those regulations were sent to Sanden

(Testimony of Stephen T. McDermott.)

and Ferguson Company at the same time they were sent to all other merchants.

The Court: How do you know that?

A. We have a card index attached to each regulation and the card is returned to the office.

The Court: Produce that card index showing that here at ten o'clock tomorrow morning.

Q. Is it not true that businesses have different methods——

A. That is correct.

Q. ——of keeping books?

A. That is correct.

Q. Some of them take regular inventory, and some of them do not? Isn't that a fact?

A. Every store that I have ever had any connection with has taken a periodical inventory, usually between Christmas and New Year's, in order that we might provide an adequate trading statement.

Q. You are speaking of merchants, businesses you have been connected with?

A. Yes, sir.

Q. But it is true there may be many other different methods of carrying on business?

A. That is correct.

Q. In other words, the cost of overhead in a man's business [212] has quite a bearing, does it not, as to the price his merchandise can be sold for?

A. Naturally all overheads are not the same, so all mark ups couldn't be the same.

Q. Some stores might have inventory every 90 days; some every 60 days; some only once a year?

A. Depending on the commodity sold I think.

Q. Some merchants might not have a base inventory at all?

(Testimony of Stephen T. McDermott.)

A. What do you mean by a base inventory?

Q. As to listing of prices.

A. You mean quantity?

Q. Yes, quantity, prices, and the various different kinds of articles.

A. Well, I suppose it might be possible. I don't see how they could make out their income tax without it.

Q. Income tax is based upon the amount of money made, is it not?

A. It generally could be different, yes.

Mr. David Smith: That is all.

The Court: Just what line of business have you been in and where?

A. I was in business in Glenwood Springs, Colorado, where I worked in a retail dry goods store.

The Court: A small town?

A. That was a town around 2500 people. I managed a general merchandise store in Wyoming.

The Court: How many people?

A. That was a town of 250 people; and I was assistant manager of J. C. Penney Company in Billings, Montana.

The Court: How long? [213]

A. I was assistant manager for four years, and I worked for them for three years prior to being made assistant manager.

The Court: How did you happen to leave a responsible position like that to come in here?

A. Because I thought I might be able to aid in this national crisis, I left their employ in July, 1942.

(Testimony of Stephen T. McDermott.)

The Court: Is that all the experience you have had in merchandising? A. Yes, sir.

The Court: Any further questions?

Mr. David Smith: That is all.

Mr. Wohl: That is all. The plaintiff rests.

The Court: Very well, I think we will adjourn at this time until ten o'clock tomorrow morning.

(Saturday, January 15, 1944, ten o'clock in the morning, trial of the case of Chester Bowles v. Sanden and Ferguson Company resumed and the following proceedings were had:)

The Court: Proceed with the case on trial.

Mr. Wohl: If the Court please, at the close of the testimony yesterday you instructed Mr. McDermott to produce the card index files of the Office of Price Administration into court this morning. He has it here.

The Court: Very well; I'll check the record during the noon hour and see what I want done with it.

DEFENDANT'S CASE

EUGENE SANDEN,

called as a witness on behalf of the Defendant, and having been previously sworn and having previously testified as a witness on behalf of the Plaintiff, testified as follows:

Direct Examination

By Mr. David Smith

Q. State your name, please. [214]

(Testimony of Eugene Sanden.)

A. Eugene Sanden.

Q. You are the manager of the Sanden and Ferguson Company, the Defendant in this action?

A. I act as manager, yes.

Q. How long have you been connected as manager of Sanden & Ferguson Company?

A. Oh, for approximately fifteen or twenty years.

Q. As such have you become acquainted with the merchandise handled by the store, the various classes of goods, prices, qualities, weights, and widths?

A. Yes.

Q. Are you in that capacity the buyer of goods?

A. Yes, I have.

Q. Explain to the Court your duties as of February and March, 1943, as well as the present time, in that store.

A. March, 1943, or March, 1942.

Q. Well, both if there is any difference.

A. March, 1943, and my duties at the present time are very similar. In 1942 I was manager; I had a sort of executive job where I handled the office work and took care of public contact, took care of the advertising, and did that sort of work. But in March, 1942, or shortly thereafter we lost one of our boys to defense work in California; and later in that year in September, one of my assistants, my principal man in the store, was called to the army and that left me without any help whatsoever in the men's department so that I went down and took care of that alone practically through September,

(Testimony of Eugene Sanden.)

October and November of 1942. In 1942 in December I secured the services of an elderly lady to help me in the men's section, and a girl who was married to an army man came in [215] and helped out through the Christmas selling season. So I was, you might say, in very tight straits concerning help and my work became more and more floor work and clothing work, and assisting in the janitor work. The old man we have for janitor is up in his late 70's; my father is past 80 years of age, and one of the clerks, head girl in the notion section, went to the WAC's, she became a WAC. The other girl who assisted her in the notion section took a job, an office job, which she preferred to selling. She took this office job with the telephone company. Our assistant dry goods lady went out to the coast where her husband was employed in war work. Our assistant office girl went and took a man's place over in one of the banks in town. And so we have been in a desperate situation so far as the help problem is concerned and I have had to get in and take care of the loose ends wherever possible.

Q. At the present time and also in March and February you were doing the buying, distributing of these goods?

A. I was doing the buying, I did the banking, I would take care of the mail, check in merchandise from both express and freight; I lugged it around; helped clean up the store,—I am a general utility man, as it were, instead of a manager.

Q. Mr. Sanden, on or about February 1, 1943,

(Testimony of Eugene Sanden.)

you prepared for the Price Administration a base period statement where you set forth the various goods that were in the store for sale?

A. Base period statement and cost of living commodity list of prices was prepared in January and early February, 1943.

Q. Now, Mr. Sanden, why did you prepare that statement, or cause it to be prepared?

A. Well, it was essential that we prepare it; we tried to do [216] the best we could about it. We went over, my sister and I, to see Mr. Anderson and Mr. McDermott, and it was our understanding at that time that it would be all right to prepare the list by taking the merchandise that was in the store at that time and listing it together with the merchandise that we had on hand and list that merchandise and that would be a satisfactory statement to be listed, a basic price list and cost of living commodity list.

Q. Do you know whether or not this list covered all the goods in the store?

A. Well, we endeavored to, of course. Instructions were to those who got the goods out and listed it to take and list everything, but you know human beings are fallible and they are bound to overlook items here and there, as I did it myself in connection with the overalls you are talking about in this case. I had something to do with the listing of those overalls and I overlooked a carpenter's overall, Black Bear heavy white duck overall, manufactured by the Black Bear Company in Seattle, and I think we had a few pairs on hand under the shelf some-

(Testimony of Eugene Sanden.)

where I overlooked in the rush. I made that mistake. I have the invoice right here now of the overalls; we sold them for \$3 a pair——

Mr. Wohl: We object to the witness' testifying it is not responsive to the question.

The Court: It is responsive. He was asked if he listed every item in the store. He said that he endeavored to, but he personally tried to list the overalls and overlooked one.

A. ——I overlooked this one item here, and the overall cost us \$33 a dozen in Seattle for the regular sizes, and \$36.30 a dozen in Seattle for the extra sizes, and we sold them here [217] in Helena for \$3 a pair. Now I don't think anybody has been injured there.

Q. You have been charged, Mr. Sanden, that you failed, neglected, and refused to list all the commodities sold or offered for sale in March, 1942, with the maximum prices thereof. Explain to the Court with relation thereto?

A. Well, of course that is merely an allegation. No, I deny that very definitely. The instructions were to those who took stock for the purpose of making the list to list everything, and it was our endeavor—we tried our best to list everything. But, as I say, in a store that handles thousands of items you are bound to overlook a few. As a matter of fact these few instances of failure to list it seems to me proves that our record is very good in view of the fact that we were investigated for approximately three weeks time. Our records were taken

(Testimony of Eugene Sanden.)

out of the store over to the Placer Hotel where they analyzed them and went through them and it was three weeks to the day from the time they came into the store to begin investigation—they went around to all sections; they didn't investigate these few retail dry goods items, they investigated everything through the store and they finally landed on these few things back in one corner of the store to make a case. But we handled so many different things——

The Court: How many items do you handle?

A. I should say we handle approximately 4,000 items.

The Court: And how many in March, 1942.

A. We handled more in March, 1942, than in March, 1943, because merchandise has been getting scarcer, and many things talked about here—for instance canvas, we haven't a yard of canvas in the store and can't get it. We haven't a yard of denim in the [218] store, and there are several other things we are entirely out of, can't replace, so in March, 1943, we had less goods on hand than we had in March, 1942.

The Court: Would that be just less in quantity or less in number?

A. Less in quantity and——

The Court: What I was trying to get at is this,—the idea is you are charged with having made a mistake in several respects. I wanted to know what the percentage of error was?

A. Well, I don't believe the percentage of error is one percent, or even one-half of one percent; I doubt it very much.

(Testimony of Eugene Sanden.)

Q. Mr. Sanden, do you maintain a permanent inventory system?

A. No, we do not. We have no permanent inventory system.

Q. Explain to the Court the system you keep in the store upon which you based this price listing and commodity listing so that the Court will understand what you had to work with and what you based the listing upon?

A. Well, in the listing we went to the goods themselves. Our inventory had already been taken. We take our inventory after Christmas and usually complete it shortly after the first of the following January, but in this case it was necessary for us to get lot numbers and secure the names of manufacturers and describe the article and show what the retail price was. Well our inventory system doesn't take any of that into consideration. All we do in taking inventory is to list categorically goods of prices and cost price. We have the cost system we work under one system of inventory, but we don't itemize each article according to lot number and description and manufacturer; it is an entirely different thing.

Q. How long have you maintained that system?

[219]

A. That has always been our system.

Q. Why do you maintain that particular kind of system rather than a permanent inventory system?

A. Well, because we are a small store relatively, in a small community and we try to operate simply

(Testimony of Eugene Sanden.)

because simple operation means less cost, and less cost means we are in a better competitive position. If we had a permanent inventory system it is very likely we couldn't continue in business because the cost of installation of the permanent inventory system for a single store would amount to approximately \$2000, and then it would take two people full time at approximately \$150 a month apiece to keep that permanent inventory going, and we have never operated on that basis for this reason, we are in constant contact with our employees. Now some organizations have no personal contact between management and their sales forces, or personnel below management, and are required to have a permanent system of inventory for police purposes; it is a police system. They have to keep track of every single item right down to the last nickel; they have to account for this and account for that. It isn't so in our store; never has been.

Q. You heard the witness testify for the Plaintiff with relation to the fact that it was an easy matter to keep a permanent inventory system, or in that neighborhood, and gave as an example that he had been employed by the J. C. Penney Company and that it was an easy matter to make a listing of this kind because of the inventory. Do you know anything about that?

The Court: I think in that matter we can assume the Judge has ordinary intelligence and experience and common sense requires that he shall conclude that a system proper for use [220] in a

(Testimony of Eugene Sanden.)

chain store such as Penney's is not at all applicable or reasonably expected to be used in a small store operated in a small town such as the Defendant operates in this case. That's the chief difficulty with the OPA; they are trying to conduct the business of the individual in the same way the chain store operates. Sears', Penney's, with hundreds of employees, it is a simple matter. As the witness suggested, they have to have the inventory system as a police measure. They don't know their help; they can't trust their help. A small store operates in constant contact with their employees; he knows them, he knows their habits, so we will just get away from that idea that the OPA can establish a system. He has testified he couldn't operate under that system. He would have to close his doors. The Government may be able to prove he is wrong in that contention, but clearly the Government has no right, or a bureaucratic agency, to take from a man his earnings of a life time, and that is the situation here. This man and his father before him have been in business for more than a half century right here. The net result of his testimony is that the business would be closed if he is required to do what these experts in Washington think he should do with such great ease. So, I think we will just take it for granted that the bureaucrat was without power to require him to adopt the method that it might be possible for large chain stores to use; they must temper the rules to the situation in which the individual finds himself. In other words, they must cut their system in such a way that the

(Testimony of Eugene Sanden.)

man operating a single store, such as here, may operate within his income and with the help he can get. So, we will pass that point. If I am wrong, I am wrong and we will stand on that statement. It is based on the theory [221] we still live in America; the Constitution still goes. The rights of the individual may be taken where more need requires it, but not where it is not necessary. There is one thing that interests me in this case—how can a man be expected to know what an article was selling for in the year preceding?

Q. Mr. Sanden, you have been charged that the descriptions of the articles listed were indefinite, uncertain and confusing, and that it was impossible to determine what articles were priced, or the prices thereof. Explain to the Court that situation.

A. Well, it comes back to the point I have already tried to make; that we were operating under difficulties and those that were taking the inventory, the help taking the inventory, were instructed to do the best they could. Now in many of these instances here relative to these pieces of yard goods, because of the fact that we do not have a permanent inventory system, there is no name or no lot number often times on these bolts, simply the cost and selling price, so unless the person taking the inventory for the purpose of these price lists, cost of living commodity price list, could identify the goods sufficiently to show who the manufacturer was through memory or knowledge, why they simply had to give up; just do the best they could; that

(Testimony of Eugene Sanden.)

was the best that was possible under the circumstances.

Q. Is that the reason for the numbers being left off of the inventory?

A. That is correct.

Q. That is, of this listing?

A. That is correct. [222]

The Court: As I understand it, there wasn't any bolt number to put in the list?

A. There wasn't; if there had been it would have been in the list because I was born in this community, I have grown up here and I think generally I have the respect of the community. I don't try to lie or cheat or defraud anybody and we did the best we could and that is all there is to it. I have lived too long to try to do that sort of thing. I am about fifty years of age and after that length of time in one community I try to do the best I can and let it go at that.

Q. Mr. Sanden, you have been charged in the Complaint that the statement did not contain an appropriate description or identification of the many commodities listed. That pertains to an appropriate description or identification?

A. Well, it goes back to the same thing again. We were unable to do it in some instances. Generally speaking I think we did in the large percentage of cases, but there were exceptions where we couldn't identify them, but it was not through any intent to not identify; it was simply a failure——

The Court: Who determines what an appropri-

(Testimony of Eugene Sanden.)

ate description is? Is there any rule by which you can measure known to you?

A. No, as I understand it, the Office of Price Administration leaves the descriptions to the party, to the common sense and judgment of the person who is making up the list. There is no definite ruling on that score so far as I am able to understand. You are supposed to do the best you can and that is all they are supposed to require of you.

The Court: That is all they have a legal right to require of you. Did you have any discussion of that matter with Mr. McDermott? [223]

A. Yes, I did.

The Court: Did you have any with Mr. Wertz?

A. I did with both of them; I told them exactly what we were up against.

The Court: Did you have a discussion with Mr. Anderson?

A. Yes, I did.

The Court: Just tell us what that discussion was; what you said and what they said as near as you can recall.

A. Well, I saw Mr. Wertz in his office; I think it was before I went to see Mr. Anderson and Mr. McDermott, and we went over the whole situation at that time. I told them the difficulties I was having in connection with operating the store and our help problem and that I had been delayed on account of all these people leaving me and I was obliged to take on new help where I could get it, and obliged to do without help where I couldn't

(Testimony of Eugene Sanden.)

get them. We had a warm discussion for a little while and Mr. Wertz said, "We don't care anything about that; all we care about is you get this in. That is all there is to it." He said, "Close the store if necessary and go ahead; close the store and get the list out." I said we couldn't. He said, "That's your patriotic duty." I said, "See here, Mr. Wertz, I don't want to discuss it because I have never had the matter brought up in connection with me before; but," I said, "I have no apologies to make for my patriotism under any circumstances." And when we got through talking he was very much nicer about his attitude toward me and we left on speaking terms at least. Well, it was a little later on my sister and I went over to the price officers, Mr. Anderson and Mr. McDermott; we talked the thing over; we were all right. We told them our problem and our [224] difficulties and I explained to them about Florence coming through at this time made it possible to have someone who knew something about stores, our store, to go ahead and take charge of the getting together of these prices and typing them out and making the list of them. And we inquired of them just what we should do and their answers were more or less indefinite; they simply handed me a booklet—"Here's a booklet." They showed me a list one of the other merchants in town had made. I believe it was Christie's, Nifty Bill's Store, across the street from us, that they had sent in. So we looked that over and we took this little booklet and went back to the store and went to work and did the best we could.

(Testimony of Eugene Sanden.)

That is all there was to it. There wasn't any exact information; he just simply gave us the information contained in that booklet, and of course there was nothing else much they could do, but with Mr. Wertz I had it rather hot and heavy and I didn't like his attitude in the matter at all.

The Court: As I understand it from your testimony, you were engaged as a participant in the last World War. A. I was.

The Court: And still a man who hadn't been in the war was questioning your patriotism?

A. Yes, sir.

The Court: It made you angry?

A. Made me quite angry because immediately upon the declaration of war I paid my fare to the ROTC at Stanford and stayed there until the fall, and then I joined the Army Ambulance Corps. I was in the service two years and I was overseas for over a year; I was up in the thick of things for a while.

Q. Mr. Sanden, in February, 1943, your cost of living commodity [225] statement was prepared. Now that was prepared at the same time with this other list, was it not? Were they in together? Are they part of the same thing?

A. Yes, in a way. The cost of living commodities are a special list of items that are considered to be basically essential to the average purchaser and they are set up as a cost of living list. Now that list is something that must be filed with the Sugar Board down here. The basic price list is

(Testimony of Eugene Sanden.)

all the rest of the goods that you have in the store that is supposed to be kept on file in your establishment for customers to see. And by the way, let me explain that I haven't had one single customer question our prices in our establishment in all this time. I have never been taken before the Sugar Board.

The Court: What has the Sugar Board to do with dry goods?

A. If anyone should make a complaint against us on the price basis, any individual, we would be referred to—not the Sugar Board, but it is this group of merchants, business people, that hold meetings every Monday evening down there to try to iron out difficulties between customers and business establishments, but never once have I been called before that board.

Q. That is the County Ration Board?

A. I have never been called before it. And another thing I want to explain is this, that if a customer ever purchases anything from us and it isn't satisfactory, they can bring it back and get their money back, so they can't be hurt. We have people now to this day since Christmas time bringing back gifts, bringing them in to us; we are refunding their money; we are giving them money for gifts they got from somebody else, so they can't be hurt so far as our policy is concerned.

Q. You have been charged this cost of living commodity statement [226] listed articles that were too indefinite and uncertain and confusing and did not contain an appropriate description or identifi-

(Testimony of Eugene Sanden.)

cation. In other words, that refers back to the same testimony that you have explained to the Court with relation to the base period statement, does it not? A. Yes, it does.

Q. You have been charged that you were offering for sale cost of living commodities not listed in the statement. Is that true?

A. Well, it is possible that we have done that because of the fact that there were new articles arriving from time to time. We come right back to the help problem, problem of assembling all these things together and getting out these lists and filing them with the Sugar Board; maintaining a permanent inventory again, practically speaking.

The Court: I think the Court understands what the Sugar Board is now.

A. It is commonly called that, I believe. The Price and Ration Board.

Q. Mr. Sanden, you have been charged in the Complaint that there are no supplemental statements filed or prepared by you. That refers, does it not, to the monthly additions?

A. That refers to keeping that matter up to date, and, as I say, due to the fact that it was a question of keeping the doors open or a question of closing up and getting out the lists. I thought the best thing to do would be to take the former course and give employment to the people in the store and maintain activity on Main Street and the establishment and try to go ahead and do the best I could, and then if I had a chance to get some of the stuff out, I would do so. It has been almost [227]

(Testimony of Eugene Sanden.)

impossible. As a matter of fact I have a month's work staring me in the face right now apart from this.

Q. You have been charged in the Complaint that you failed to post or display a maximum price. Is that true?

A. That isn't true at all. Everything is marked in plain figures; a bolt of goods has the price marked on the end of the bolt. A suit of clothes has a ticket on the suit. A ladies' hat has the ticket in the hat, so that is absolutely an untrue allegation.

Q. But what about the ceiling price?

A. It may be that in some instances where probably the stamp ceiling price doesn't appear, but that happens just because of the fact we haven't the help to take care of those things and see it is all done as these things come and go.

Q. You have been charged in the Complaint that in March, 1942, the highest price you sold gingham, denim, challis, rayon, eyelet, gaberdine, jersey, overalls, Indian head, percale, diapers, bur-lap, sateen, and ticking was one figure for each, and then in February and March that you sold each of these articles for a higher figure. Is that true?

A. February and March, 1943? No that is not true. There have been no markups at all; that isn't true. There have been no markups in prices. It may be that new goods have come in and taken on those new prices, but there have been no markups

(Testimony of Eugene Sanden.)

of the old goods in the house at that time. You go down to the store today and you will find the original tickets on things that have been there a couple years and the prices are the same. If I wanted to be smart I could go ahead and increase the prices and get away very nicely, but I am not interested in that sort of thing; that kind of thing doesn't interest me. [228] But the original tickets are on everything just as they come in and are originally marked.

Q. You have been charged that the highest price of each of these articles sold for, or were offered for sale in March, 1942, was one figure for each, but that you listed the price for each in the base period and cost of living commodity statement for that period at a higher figure for each and therefore you falsely represented the price——

A. That isn't true.

Q. Is that true?

A. No, that is absolutely not true.

Q. Explain to the Court how through the investigation that was made by the Price Administration by the comparison of slips from one time and slips of another time that difference of prices can arise and show up.

A. Well, that's simply due to the fact that new goods keep coming in to the house; we are trying all the time to keep a stock of goods on hand sufficient to do business with. As these new things come in a sale may be made from this,—a dozen sales, twenty sales,—the prices will vary, likely

(Testimony of Eugene Sanden.)

because of different goods, different quality, different texture and widths, and so forth, from goods that have been on hand prior to them. On the other hand, there may have been goods on hand in March, 1942, that we had on hand two years, three years; sometimes certain articles don't go very fast, they stay on hand. You get a fast turning goods and it is impossible to identify any of those articles in piece goods for the simple reason piece yardage doesn't have anything on it by which to identify it.

Q. Explain to the Court what causes the costs and prices of these various types and classes and qualities of goods. What [229] would make the different prices in a towel?

A. The quality of the towel; the size of the towel, the texture, the finish; there are so many things that it would require a book to answer that. As a matter of fact the matter of the manufacturer and construction of material is a study in itself that requires a lifetime. It isn't as simple as that. But so far as we as a little merchant in this community are concerned, we try to gauge the price according to—we add our cost of doing business; we try to figure a small profit in there, that's how we arrive at our prices of all these things. Of course, some things cost less, why, naturally as a general rule, the price will be less.

Q. You have seen introduced in evidence here in Court these various slips representing sales of

(Testimony of Eugene Sanden.)

goods. Can you tell by looking at a slip the exact article that was sold?

A. No; that's because of the fact we don't keep a permanent inventory. If we sell a yard of spun rayon we put down spun rayon at such and such a price and carry it out to its figure. If you have a permanent system of inventory the sales slip would require you to show the lot number and other description of it so that when that ticket reached the office there would be a personnel at the office who have charge of the permanent inventory system to deduct that two yards from the item in the book that they have showing that there were forty yards of that particular spun rayon on hand; therefore after this date there would be only thirty-eight. It is a system of very exact accounting.

Q. Could you tell by looking at a slip that represented a sale in 1943 as of March and February and tell whether or not that is the same article that was in the store as of March, 1942? [230]

A. No, we couldn't, could tell nothing from them sales slips, absolutely nothing.

Q. You have seen introduced in evidence a bunch of slips, say five or six or ten or twenty or twenty-five, referring to a particular article that was sold for a particular price in 1942, have you not? A. Yes.

Q. And you have also seen slips written thereon with the same name of article, whether it be challis, burlap, representing the highest, or at least the ceiling price for a particular article as of 1943.

(Testimony of Eugene Sanden.)

and there may be six or ten or twenty or twenty-five. Explain to the Court that situation when the prices are different. That is the range of prices in 1942 might be 39c, and the range of prices in 1943——

A. It is due to the fact that it is probably different goods. For instance you take spun rayon. That is essentially a style article, that is to say, a texture. This spring or this fall would be different from a texture that women might want the following season, and consequently a spun rayon of this spring or this fall say would be a little bit lighter in weight, or have more luster, or more pile or nap to the finish than spun rayon you might get in the following season because the demand would be different. So it is in all textiles, there is constant change, constant turnover. The only thing basic is a muslin, and even there you have so many different varieties and kinds that it is impossible to say from one shipment to another whether or not you are getting the same thing. They usually come in with different markings, different numbers and listings. You never can duplicate—very rarely you can duplicate anything in piece goods. [231]

Q. If the time instead of being March, 1942, might have been July or August of 1942, and an investigation was made as of in this case in 1943 in March or February, would it be possible that these figures would be the same, or would there be a different picture?

(Testimony of Eugene Sanden.)

A. There is bound to be a different picture for the reasons I have stated.

The Court: Just like the change in the body outline of the automobile, the mode is there, but they put little changes on the outside so that the old goods become outmoded and the new goods go on the market. The Court understands that; no use in covering it.

Q. Now you have been charged, Mr. Sanden, that you sold or offered for sale during March, 1942, kinds, qualities and widths of each of those named commodities at lower prices than you listed them, and that you failed, neglected, and refused to include the less expensive kinds and qualities in the base period statement. Is that true?

A. No, it isn't true generally. It may be that we had a remnant that was ready to be put in the remnant pile and consequently it may have been sold for half price, or it may have been defective. Often times you go through yardage and you find misstriping and you sell it for less. Or it may have been a piece of goods—we are human beings; we are not one hundred percent accurate, never have been and don't suppose we will ever be. There were instances where, no doubt, a piece of goods was overlooked. It may have been a lower price, or just as well as a higher priced piece. I can't say definitely just what happened with regard to any one particular thing, but that is the likely idea behind the whole matter. [232]

(Testimony of Eugene Sanden.)

Q. Now, Mr. Sanden, you have been charged that since the 18th day of March, 1942, you sold or offered for sale commodities for which maximum ceiling prices were established by the General Maximum Price Regulation, and that you failed and neglected to keep records showing the basis upon which you determined the maximum ceiling prices of such commodities. Is that true?

A. No, we haven't failed to keep records. We keep all records we have ever had.

Q. In other words, you are maintaining the same records now you always maintained?

A. We are maintaining the same records we always have, there has been no effort, and so far as any matters of this case are concerned, I think even the investigators testified we dealt absolutely up and above board. We just turned everything over to them and they took these things over to the hotel; they didn't examine them in our place of business. I said, "Yes, go ahead and take them over." I had no idea the case was going to be brought against us.

The Court: Went over to the hotel? What do you mean by that?

A. The Placer Hotel at the State Office of the Office of Price Administration.

The Court: The State Offices are maintained there? They took them to their main office?

A. The main office of the Office of Price Administration in the Placer Hotel, all of our records; there had been no slips taken out or destroyed, nothing at all. We have given everything they

(Testimony of Eugene Sanden.)

wanted and we kept everything intact just the same as we always have.

Q. Mr. Sanden, when was it you first realized that they were preparing an action against you with relation to the preparation [233] of these statements?

A. Well, I felt, I was not certain, but I felt that when they were so persistent in their investigation that they had some case on hand against us; that was in March, I guess it was in March, 1943.

The Court: That is a question for me to determine whether they had a case or not.

(At this point the Court took a short recess after which the following proceedings were had:)

Cross-Examination

By Mr. Wohl:

Q. On direct examination you stated that Loren Anderson and Mr. McDermott only told you generally what you should do with regard to the two statements in question? A. That is correct.

Q. You also testified they gave you a book?

A. That is correct.

Q. Now there is introduced in evidence Plaintiff's Exhibit No. 4, "What Every Retailer Should Know About the General Maximum Price Regulation." Is that the book you referred to?

A. That is correct.

Q. You also testified on direct examination that if there were any differences in prices as disclosed by the sales slips, they were probably due to the

(Testimony of Eugene Sanden.)

fact you were getting in new merchandise in stock?

A. That is in part correct, yes.

Q. How did you arrive at your maximum selling price for that new merchandise?

A. Well, according to our system of markup.

Q. That is, you just took your regular markup?

A. Yes. [234]

Q. Did you try to determine whether they compared with the articles that you may have been selling in March, 1942?

A. Oh, yes, we do that right along.

Q. Do you keep records of those?

A. If we have something similar on hand we try to keep in line. However, I wish to explain this that many things that could have been had in March, 1942, are not available today at all, but we try to keep within range of what we consider to be, well, a price that it has been customary for the people to pay,—if that answers your question.

Q. Do you take a definite markup above cost?

A. We have no definite system of markup. As in the case of overalls, we sell below what they cost us.

Q. If you got a new shipment of a different quality of any yard goods, how would you fix the selling price of that?

A. Well, we, we I say, figure our original cost; we figure the transportation, cost of doing business into the price, and then a modest markup of profit.

Q. Would you go back and try to compare that particular new commodity?

(Testimony of Eugene Sanden.)

A. There would be no use in making a comparison if it was a different thing.

Q. Would you make any attempt to compare that new commodity with any commodity that you handled in March, 1942?

A. Well, if I had the 1942 commodity on hand I would, yes. If it were the same thing approximately within the range of that thing, similar in some way, I would try to; however, there has been, so far as the price increase is concerned, the price increase has been hidden in depreciation of quality. Take a boy's shirt, now a boy's shirt that at one time sold [235] for 69c would probably sell for \$1.25 today. But our maximum price on a boy's shirt, I think, was \$1.25; that is a boy's printed broadcloth shirt, and these shirts today we sell for \$1.25 are not as good quality shirts as the shirts we previously sold for \$1.25, but it is within the maximum price we established on that particular kind of article, although it costs us a great deal more today. A boy's shirt costs \$11.87½ a dozen in St. Louis and New York, and we sell it for \$1.25, but it isn't the quality shirt the shirt used to be we sold for \$1.25 that cost us less than \$11.87½ a dozen.

Q. Getting back to yard goods, now, if you didn't have the same article, if you didn't have any yard goods on hand which you could compare the new yard goods with, how would you arrive at your price? Just take a definite markup?

A. Through markup. What we take into consideration is we try to be competitive; we try to be

(Testimony of Eugene Sanden.)

in line with all others selling the same kind of fabrics for, or similar for. We take that into consideration also. There are so many details in the matter of marking a piece of goods that to give a full explanation is almost impossible.

Q. You are acquainted with the provisions of the General Maximum Price Regulations, are you not?

A. I have read them through.

Q. You are a member of the Montana Bar?

A. Yes.

Q. You have an LL.D.?

A. I have a B. L. Degree from the University of Chicago.

Q. You understand there are definite means of pricing various articles under the General Maximum Price Regulations?

A. Well, yes there are with regard to the same article. [236]

Q. And if you do not handle the same article now as you did in March, 1942, you understand you are to price it according to a similar commodity you handled in that period, don't you?

A. If it is similar enough to be the same. If it is a different article there is nothing in common.

Q. What would you mean by a different article?

A. Different article? I just simply mean a different article; different quality, different texture, different finish, different style.

Q. You understand that if you are unable to price the article according to a similar commodity, you are to shop your competitor?

(Testimony of Eugene Sanden.)

A. I have never done it and I don't propose to do that. I am not going to shop competitors.

Q. Now referring to your employees, how many people do you have employed in the store at this time, Mr. Sanden?

A. Well, I think probably we have about fifteen.

Q. What is your average?

A. About twenty.

Q. Would you say that the average number of employees during 1942 was about twenty?

A. Yes, I would.

Q. How about 1941?

A. I would say it would be about twenty.

Q. You would say 1943 has been about the same?

A. In 1943 it has been less all the way through; from four to five people less.

Q. Isn't it a fact, Mr. Sandeen, that in your report to the Unemployment Compensation Commission in the month of January, 1943, you made a return that you had twenty-four people employed [237] by you?

Mr. Smith: Objected to as not proper cross-examination.

The Court: He spoke of lack of assistance as having a bearing on what he was able to do, so I think it is within the limit. Overruled.

A. It may be true that at that particular time we did have, but mostly that was in January, 1943, the first of the year—it would be the end of the year, 1942—that was mostly green help we had at Christmas and inventory; incompetent mostly.

(Testimony of Eugene Sanden.)

Q. Isn't it a fact in the month of February, 1943, you made a return that you had twenty-two employees? A. In February, 1943?

The Court: Just a moment. The rule is that in examining a witness with reference to a writing you must submit the writing to him for his consideration before he is required to answer any question. In other words, we don't lay traps. If he did make the return you have it before you. You may examine him with reference to what the return shows, but you must submit the return to him.

Q. Isn't it a fact that during February, 1943, you had twenty-two employees?

A. I couldn't remember off-hand.

The Court: The Court ruled upon that question; he doesn't know. The Court has ruled that if you are going to examine the witness on a return that may have been made you must submit it to him. You might refresh his memory, but clearly before you can examine him on anything of that nature, you must submit the writing to him. The Court has ruled on that and the ruling stands.

Mr. Wohl: Does that also pertain to the year 1942?

The Court: It pertains to all the years and all the months. [238]

Mr. Wohl: I am just asking a general question.

The Court: He has stated several times it is impossible for him to answer that form of question. "I don't know," and if he doesn't know he can't testify, because one can only testify to things he

(Testimony of Eugene Sanden.)

knows of his own personal knowledge. The rule is well grounded; the Court has merely applied it.

Q. You testified on direct-examination that the prices were marked on all articles?

A. Yes, that is true.

Q. What prices were you referring to, the maximum prices or the selling prices?

A. The maximum prices. The maximum prices in practically all instances are the selling prices unless we have a sale.

Q. Do you have the word maximum or ceiling price marked on all articles?

A. We may not have it on the article; we have it on the box or list. As I say, there are some instances, probably a few, that we have overlooked. We are not 100% by any means, but we are largely all right. For the most part we have them marked.

Mr. Wohl: That is all.

Mr. David Smith: That is all, your Honor.

The Court: Any rebuttal?

DONALD I. CREEL,

having been previously sworn and having previously testified as a witness on behalf of the Plaintiff, was recalled by the Plaintiff on rebuttal and testified as follows:

Direct Examination

By Mr. Wohl:

Q. You are the same witness who hertofore testified?
A. Yes.

(Testimony of Donald I. Creel.)

Q. Mr. Creel, I believe you testified on direct-examination as to the time that you made your investigation of Sanden and [239] Ferguson Company?

A. Yes.

Q. What were the dates of that investigation?

A. March 23 to March 31, 1943.

Q. Now during that period how many days were you actually in the Sanden and Ferguson Company Store?

Mr. David Smith: Objected to as not proper testimony for rebuttal.

The Court: I think the testimony is to the effect that approximately three weeks were consumed in this investigation. Overruled.

(Question read by the reporter.)

A. I can't say off-hand. Most of that time was spent in the state office. We were—Miss Clark and myself were in the store on the 23rd of March and we made one or two trips back to talk to Mr. Sanden and to inspect some of the merchandise. I made one trip back to return the sales slips which I believe was within,—probably the 31st of March, the last day. Then I made one other trip back on May 15th, was all I recall. Now I may have gone back to the store at some other time after that. I recall having gone back to the store, oh, probably three or four times.

Q. Did you commence your examination of the sales slips in the store?

A. Yes, I did.

Q. And why did you not finish in the store?

A. Well, we didn't have a very good place. While they did furnish us a table to work on, it was hardly

(Testimony of Donald I. Creel.)

large enough, and, too, we were exposed to the public.

Q. Where was that table located? [240]

A. That was in the basement in the furniture department.

Q. Did you request of Mr. Sanden permission to take the sales slips to the Office of Price Administration? A. Yes.

Q. Were you acquainted with Wesley Wertz?

A. Yes.

Q. Do you know where Wesley Wertz is at this time?

A. I understand he is in the Navy.

Q. Do you know whether he is present in Helena?

A. No, he isn't working with the Office of Price Administration any more.

Cross-Examination

By Mr. David Smith:

Q. As a matter of fact, you were making an investigation of the records of Sanden and Ferguson Company, that is the Office of Price Administration was, even in the latter part of 1943, were you not?

A. Not to my knowledge; not me, no sir.

Q. In other words, it is possible that there might have been agents of the Office of Price Administration in the store even in the latter part of 1943 going over records and copying down statements, isn't that a fact?

A. Not to my knowledge, sir.

Q. But there might have been?

(Testimony of Donald I. Creel.)

A. Well, I couldn't say; I don't know. Personally I have been on the road most of the time. I have had nothing more to do with it since May 15th. I know nothing more about it.

Q. Somebody else might have been in Sanden & Ferguson Company in the latter part—

The Court: He simply told us he doesn't know; that should end that examination. [241]

Q. Then, Mr. Creel, do you know whether or not records were taken to the main office in the Placer Hotel and examined after you left?

A. Not to my knowledge.

The Court: I thought you testified you took them there for examination because you were not provided proper quarters?

A. Maybe I didn't understand the question.

The Court: Your testimony indicates that you did take the records to the Main office of the Office of Price Administration.

A. I misunderstood the question; I thought you asked if I had taken them back after that. Repeat the question, please.

(Question read by the reporter.)

A. On March 23rd? We took them there at that time.

Q. And even continuing on beyond March 31st?

A. I am positive that they were returned on March 31st; I can't say just what day.

Q. In other words, the only investigation that you are referring to is the investigation you yourself made?

A. Yes, sir.

(Testimony of Donald I. Creel.)

The Court: What are these records produced here in court?

A. Those? I understand they are the files you requested from Mr. McDermott. I don't know; I never seen them before.

The Court: Will counsel inform me what they are?

Mr. Wohl: After the close of court you requested that Mr. McDermott bring up here this morning the card index file of the Office of Price Administration and he has done so and these files are the card index file.

The Court: Relating to all matters under investigation by the Office of Price Administration? [242]

Mr. Wohl: I believe it came up in regard to whether or not the Sanden and Ferguson Company had been served with a copy of Maximum Price Regulation 330. I believe Mr. McDermott stated they had been and you inquired as to how he knew, and I believe his answer was they have a card index file and you requested he bring the card index file to court this morning.

The Court: Very well, you can examine him: this witness doesn't know. Call the next witness.

Mr. Wohl: No further rebuttal on the part of the Plaintiff.

The Court: Mr. McDermott, come forward please. What are the records you produced in court this morning?

Mr. McDermott: Those records, to the best of my knowledge, are records of all the merchants that have

(Testimony of Donald I. Creel.)

anything to do with the commodities sold in the State of Montana. That was compiled for the purpose of serving the merchants with the information regarding what regulations pertain to them to the best of our ability.

The Court: I notice in those records markings. What is the purpose of those markings? They are what we lawyers call dog ears.

Mr. McDermott: The Clerks were working on them this morning, correcting some of the addresses and changes of ownership and one thing and another that transpired since the first of the year in the various stores. They were working on them when I took them from them this morning.

The Court: Has any part of the record any specific bearing on the business of the Defendant here, Sanden and Ferguson Company?

Mr. McDermott: Only to the extent that his card is listed in there stating the commodities he carries so that any [243] regulation received pertaining to his business, that he is included in that mailing list.

The Court: Is there any contention that those cards are not correct?

Mr. McDermott: That's possible; I didn't make them up.

The Court: Then again we are confronted with the fact you don't know?

Mr. McDermott: I am afraid so. The only thing I have is the stencil is cut, that the girls in the mailing office used to run it through the mimeograph;

(Testimony of Donald I. Creel.)

when they mimeographed it they put it in envelopes to go to the merchants.

The Court: That's all.

Mr. David Smith: If the Court please, we would like to call Mr. Sanden back and ask him one question if it is permissible.

The Court: It is permissible if it is within the rules of law relating to sur-rebuttal.

EUGENE SANDEN,

having been previously sworn and having previously testified, was recalled by the Defendant on sur-rebuttal and testified as follows:

Direct Examination

By Mr. David Smith:

Q. Mr. Sanden, you heard the testimony here in rebuttal with relation to the investigation of the Sanden and Ferguson Company being made by agents of the Office of Price Administration as to the period of time that they used for making the investigation? A. Yes.

Q. Was there to your knowledge an investigation of the store after March 31, 1943?

A. Yes, there was; on December 15th at 3:30 Miss Clark and another lady came to the store and I was waiting on a customer [244] in the furniture section, and while I was waiting on this customer Miss Clark walked up and said she would like to see the basic price list and I told her all right; I would

(Testimony of Eugene Sanden.)

let her see it. She said she wanted it for checking, and so I went up to the Office and got the basic price list and gave it to her and then she wanted to occupy the desk upstairs for checking purposes and I told her that desk was used by one of the office girls and I said, "You can go down to the basement." And I began to wonder then after we had been down there for a minute just what she was up to. I went and asked her. I said, "Miss Clark, just why do you want this basic price list?" I said, "You have examined this before and gone over it and had it over in the Placer Hotel." She said, "We want to make a copy of it; we want to make a copy of it for Mr. Wohl." And I said, "Well, I don't think I will let you do that," I said, "I think you better give that list back to me and if Mr. Wohl wants to find out anything about the articles in connection with the complaint, Mr. Wohl can come over and see me and I will be glad to give him any information I have." That was on December 15th, ten days before Christmas when the store was full of customers and we were busy as could be. She walked up to me while I was waiting on a customer with this other lady.

Q. Did you furnish it to Mr. Wohl at a later time?

A. I have never spoken to Mr. Wohl about it, but I made a note of it at that time and put it on a slip of paper.

Mr. David Smith: We would like to make a motion that the case be dismissed on the ground the Plaintiff failed to prove the allegations of its Complaint.

(Testimony of Eugene Sanden.)

The Court: Very well, the motion will be taken under consideration. How much time do you wish for briefs? [245]

Mr. Wohl: May we have twenty days after the submission of the transcript?

The Court: And how much time does the Defendant wish?

Mr. Smith: We would like twenty days after we get Plaintiff's brief.

The Court: Let the record show that at the conclusion of the testimony the Plaintiff was granted twenty (20) days after receipt by it of a copy of the transcript of the proceedings herein in which to serve upon counsel for the Defendant proposed findings of fact and conclusions of law and memorandum of authorities in support of its contention; that the Defendant is granted twenty (20) days after service of these proposed findings of fact and conclusions of law and memorandum of authorities in which to serve upon the attorney for the Plaintiff Defendant's proposed findings of fact, conclusions of law and memorandum of authorities in support of its contentions, the Plaintiff to have ten (10) days thereafter in which to serve upon counsel for the Defendant memorandum of authorities in opposition to Defendant's contentions, and that upon the doing of these things, or the expiration of the time within which they must be done, the case will be considered as submitted and by the Court taken under advisement.

[Endorsed]: Filed Sept. 11, 1944. [246]

Thereafter, on September 12, 1944, Plaintiff's Petition for an order to forward original exhibits to the Circuit Court of Appeals, was duly filed herein, in the word and figures following, to-wit: [247]

[Title of District Court and Cause.]

PETITION

Comes now the Plaintiff, and asks the Court to enter an Order herein, instructing the Clerk of the Court to forward the original exhibits, numbered 1 to 27, both inclusive, in this cause to the Circuit Court of Appeals for the 9th Circuit in connection with the appeal taken herein.

FLEMING JAMES, Jr.

DAVID LONDON

MAX D. MELVILLE

CLARENCE E. WOHL

Attorneys for Plaintiff

Received a copy of the foregoing this 11th day of September, 1944.

PAUL W. SMITH

DAVID R. SMITH

Attorneys for Defendant-Appellee

[Endorsed]: Filed Sept. 12, 1944. [248]

Thereafter, on September 12, 1944, Order to send original exhibits to the Circuit Court of Appeals was duly filed and entered, in the words and figures following, to-wit: [249]

[Title of District Court and Cause.]

ORDER

This matter coming on to be heard this 12 day of September, 1944, upon the petition of the Plaintiff that the original exhibits, numbered 1 to 27, both inclusive, in this cause be certified to the United States Circuit Court of Appeals for the 9th Circuit, and the Court being advised in the premises,

It is Ordered that the Clerk of this Court forwarded to the United States Circuit Court of Appeals, in connection with the appeal now being taken in this matter, all of the original exhibits herein, being numbered 1 to 27, both inclusive.

JAMES H. BALDWIN

United States District Judge

[Endorsed]: Filed and Entered Sept. 12, 1944.
[250]

Thereafter, on September 21, 1944, Defendant's Designation for Additional Portions of Record on Appeal, was duly filed herein, in the words and figures following, to-wit: [251]

[Title of District Court and Cause.]

DEFENDANT'S DESIGNATION FOR ADDITIONAL PORTIONS OF RECORD ON APPEAL

The Clerk will please add the following portions of the record to the record on appeal as requested by the plaintiff, to-wit:

Motion for more definite statement or Bill of Particulars;

Plaintiff's Objections to Defendant's Motion for Bill of Particulars;

Order Denying Defendant's Motion for a more definite statement or a Bill of Particulars.

PAUL W. SMITH

DAVID R. SMITH

Attorneys for Defendant

Received a copy of the foregoing this 21st day of September, 1944.

FLEMING JAMES, Jr.

DAVID LONDON

MAX D. MELVILLE

CLARENCE E. WOHL

Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 21, 1944. [252]

Thereafter, on September 25, 1944, Plaintiff's Supplemental Designation of Record on Appeal, was duly filed herein, in the words and figures following, to-wit: [253]

[Title of District Court and Cause.]

PLAINTIFF'S SUPPLEMENTAL DESIGNA-
TION OF RECORD ON APPEAL

In addition to the records, proceedings and evidence heretofore requested by plaintiff in his Designation of Record on Appeal, heretofore filed and

served herein, plaintiff requests that the following additional portions of the record be made a part of the record on appeal to the Circuit Court of Appeals of the 9th Circuit, to-wit:

(1) Petition to certify plaintiff's exhibits, numbered 1 to 27, inclusive, to Circuit Court of Appeals in their original form, (2) order directing the certification of plaintiff's exhibits, numbered 1 to 27, inclusive, to the Circuit Court of Appeals in their original form, (3) Plaintiff's Notice of Appeal with date of filing, (4) plaintiff's Designation of Record on Appeal, (5) defendant's Disignation for Additional Portions of Record on Appeal, (6) plaintiff's Supplemental Designation of Record on Appeal, and (7) Statement of Points on which Appellant Intends to Rely on Appeal.

FLEMING JAMES, Jr.

DAVID LONDON

MAX D. MELVILLE

CLARENCE E. WOHL

Attorneys for Plaintiff

Received a copy of the foregoing this 25th day of September, 1944.

PAUL W. SMITH

DAVID R. SMITH

Attorneys for Defendant-Appellee

[Endorsed]: Filed Sept. 25, 1944. [254]

CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD

United States of America,
District of Montana—ss.

I, H. H. Walker, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable The United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing Volume consisting of 254 pages, numbered consecutively from 1 to 254, inclusive, exclusive of the Index and this Certificate, is a full, true and correct transcript of all portions of the record and proceedings in case No. 173, Chester Bowles, Administrator Office of Price Administration, Plaintiff, vs. Sanden and Ferguson Company, a Montana Corporation, Defendant, which have been designated by the parties to be incorporated into said Transcript, as appears from the original records and files of said court in my custody as such clerk.

I further certify that, pursuant to the order of said District Court, I transmit herewith as a part of the record on appeal, the following exhibits introduced and received in evidence at the trial of said cause, to-wit: plaintiff's exhibits numbers 1 to 27, both inclusive.

I further certify that the costs of said transcript amount to the sum of Thirty-eight and 50/100 Dollars, (\$38.50) and have been made a charge against the United States.

Witness my hand and the seal of said court at Helena, Montana, this 17th day of October, A.D. 1944.

[Seal]

H. H. WALKER

Clerk U. S. District Court,
District of Montana. [255]

[Endorsed]: No. 10901. United States Circuit Court of Appeals for the Ninth Circuit. Chester Bowles, Administrator, Office of Price Administration, Appellant, vs. Sanden and Ferguson Company, a Montana Corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Montana.

Filed October 20, 1944,

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 10901

CHESTER BOWLES, Administrator, Office of
Price Administration,

Appellant,

vs.

SANDEN AND FERGUSON COMPANY, a Mon-
tana Corporation,

Appellee.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON AP-
PEAL

The following is a concise statement of the points on which appellant Chester Bowles, Administrator, Office of Price Administration, intends to rely on his appeal from the judgment on the above entitled cause to the United States Circuit Court of Appeals, for the Ninth Circuit:

(1) The Court erred in entering a final judgment of dismissal of the action and the cause of action.

(2) The Court erred in entering a final judgment denying to appellant any of the relief prayed for in his complaint and dismissing plaintiff's action.

(3) The Court erred in denying the motion of appellant to strike certain portions of appellee's answer, which said portions sought to be stricken are set forth in appellant's motion.

(4) The Court erred in refusing and failing to enter judgment in favor of appellant and against appellee, and granting to appellant relief as prayed for in his complaint.

(5) The Court erred in making its Finding of Fact numbered 15 to the effect that on or about February 1, 1943, defendant prepared a base period statement, on the basis of all available information and records, showing the highest prices which it charged for such of those commodities as it delivered during March, 1942, and its offering price for delivery of such commodities during such month, together with an appropriate description and identification of each of such commodities, in so far as defendant was able to do so, for the reason that the undisputed evidence adduced at the trial disclosed that in preparing said base period statement and cost-of-living commodity statement defendant listed therein the commodities it was selling and offering for sale in January and February, 1943, with the prices then in effect, and that it made no effort to determine the kinds or qualities of commodities sold during March, 1942, nor the March, 1942, selling prices thereof.

(6) The Court erred in making its Finding of Fact numbered 17 for the reason that there is no evidence in the record that either Lorin Anderson or Stephen T. McDermott, officials in the Office of Price Administration, in January, 1943, advised Eugene Sanden, Assistant Manager of defendant company, that it would be all right for defendant to

prepare a base period statement and cost-of-living commodity statement, as required by Sections 1499.11(b) and 1499.13(b), respectively of the General Maximum Price Regulation, by taking the merchandise that was in defendant's store at that time.

(7) The Court erred in making its Finding of Fact numbered 23 for the reason there is no evidence in the record that in order for defendant to furnish in its base period statement and cost-of-living commodity statement all of the information required by the General Maximum Price Regulation that it would have to change its business practices, cost practices and methods by installing a permanent inventory system which would cost at least \$2,000, and require defendant to employ two additional bookkeepers and compel defendant to close its place of business because of the additional expense.

(8) The Court erred in making its Finding of Fact numbered 24 for the reason that there is no evidence in the record that the base period statement and cost-of-living commodity statement were carefully made by defendant in an honest effort to meet the requirements of the General Maximum Price Regulation. The undisputed evidence adduced at the trial showed that defendant did not prepare either statement until in January and February, 1943, after it had received a Warning Notice, and that it made no effort to determine the prices at which it sold and offered to sell merchandise for in March, 1942, other than to list the prices at which it sold and offered to sell merchandise for in Janu-

ary and February, 1943, which prices defendant claimed were in effect in March, 1942.

(9) The Court erred in making its Finding of Fact numbered 27 in that the undisputed evidence adduced at the trial showed that the six sales of gingham, a yard goods mentioned in said findings, were the only sales of said gingham made by defendant during March, 1942.

(10) The Court erred in making its Finding of Fact numbered 28 in that the undisputed evidence adduced at the trial showed that the two sales of denim, a yard goods, mentioned in said finding, were the only sales of said denim made by defendant during March, 1942.

(11) The Court erred in making its Finding of Fact numbered 36 in that the undisputed evidence adduced at the trial showed that the four sales of gabardine, a yard goods, mentioned in said finding, were the only sales of said gabardine made by defendant during March, 1942.

(12) The Court erred in making its Finding of Fact numbered 32 for the reason that Lydia G Clark, testified that burlap, a yard goods, was listed in defendant's base period statement and cost-of-living commodity statement.

(13) The Court erred in making its Finding of Fact numbered 39 in that the undisputed evidence adduced at the trial was that the sale of five yards of sateen for \$2.95 under date of "2-16", and evidenced by plaintiff's exhibit numbered 24, was a sale made on February 19, 1943.

(14) The Court erred in making its Finding of

Fact numbered 40 in that the undisputed evidence adduced at the trial showed that in March, 1943, defendant failed to have posted in its store the maximum selling prices for jersey, sharkskin, Indian Head, and ticking, all yard goods; for all bed spreads; for Wamsutta, Glengary and Sonoma brand of bed sheets; for women's and girl's dresses; for women's skirts; for men's overalls; for children's hosiery; for children's gloves; and for the majority of men's work pants.

(15) The Court erred in making its Finding of Fact numbered 41 for the reason that the evidence *preponderately* shows that defendant did not endeavor in good faith to comply with and abide by the provisions of the Emergency Price Control Act of 1942, and with the rules and regulations issued thereunder.

FLEMING JAMES, Jr.

DAVID LONDON

MAX D. MELVILLE

GEORGE S. SMITH

CLARENCE E. WOHL

Attorneys for Appellant

Service of foregoing Statement of Points on Which Appellant Intends to Rely on Appeal and receipt of true and correct copy thereof admitted and acknowledged this 21st day of October, 1944.

PAUL W. SMITH

DAVID R. SMITH

Attorneys for Appellee

[Endorsed]: Filed Oct. 20, 1944. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER THAT ORIGINAL EXHIBITS NEED
NOT BE PRINTED IN TRANSCRIPT OF
RECORD

Good cause therefor appearing, It Is Ordered that the following original exhibits,

Plaintiff's Exhibits 1, 2, 4, 5-24, need not be printed in the printed transcript of record, but may be considered by the Court in their original form.

CURTIS D. WILBUR

Senior United States Circuit
Judge.

Dated: San Francisco, Calif., November 10,
1944.

[Endorsed]: Filed Nov. 10, 1944. Paul P.
O'Brien, Clerk.